

April 8, 2003

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**APPROVAL OF A SOLE SOURCE AGREEMENT FOR SYSTEM UPGRADE
SERVICES FOR THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT'S
JUSTICE DATA INTERFACE CONTROLLER (JDIC) SYSTEM
(ALL DISTRICTS - 3 VOTES)**

**CIO RECOMMENDATION: APPROVE () APPROVE WITH MODIFICATION (x)
DISAPPROVE ()**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and instruct the Chair to sign the attached sole source agreement with PRC Public Sector (PRC), Incorporated to provide system upgrade services to the Department's Justice Data Interface Controller (JDIC) system for a period of nine (9) months with the option to extend on a month-to-month basis for a maximum period of six (6) months, at a maximum agreement amount not to exceed \$944,823. This agreement will be effective upon your Board's approval.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of this agreement with PRC by your Board will enable the Department to comply with the California Department of Justice's mandate that all users of the California Law Enforcement Telecommunications System (CLETS) upgrade their current systems in order to support newer technology, such as the transmission of

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images. This mandated upgrade/conversion request came in response to the initial request to the California Department of Justice from the National Crime Information Center (NCIC), a subdivision of the Federal Bureau of Investigation, to upgrade their own software so that they may receive these transmitted images via NCIC.

The system upgrade services provided under this agreement will allow the Department to take advantage of the new functional capabilities related to the CLETS and NCIC systems. Additionally, the modified system will ensure the Department's continued compliance with California Government Code, Sections 15161 and 15163, Chapter 2.5, which mandates that the Department serve as the County's CLETS control agent for all participating law enforcement agencies within the County of Los Angeles.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

The system upgrade services provided by PRC support the County's Strategic Plan Goal for Organizational Effectiveness, specifically Strategy 2. With the increase in services offered through the CLETS system by way of these upgrade services, the Department anticipates an increase in organizational efficiency and effectiveness.

FISCAL IMPACT/FINANCING

On September 26, 2002, the Remote Access Network (RAN) Board approved funding for these services for the full contract term, including all applicable extensions and/or contingencies. Specifically, these services will be funded through the Automated Fingerprint Identification System (AFIS) Fund. With the funding of these services being provided through the RAN Board, there will be no net cost incurred by the County.

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FACTS AND PROVISIONS/LEGAL REQUIREMENTS

As mentioned above, the Department serves as the County's CLETS control agent. The Department fulfills this obligation through the use of the JDIC system, a computer-based telecommunications system which serves as a link and control point between the County of Los Angeles and CLETS. The JDIC system was first established in 1976 and provides participating law enforcement agencies within the County of Los Angeles with access to countywide, statewide, and nationwide criminal justice information data files. The JDIC system also provides these agencies with the ability to exchange text messages with various federal, state, and local law enforcement and criminal justice agencies.

Prior to initiating the contracting process with PRC, the Department explored various alternatives to achieving the required modifications; however, it was soon determined that the only other feasible alternative would be to conduct a total system replacement. This alternative was rejected by the Department for several reasons, including the length of time required to accomplish such a replacement, user satisfaction with the existing system, and the total cost required of such a replacement.

As part of the system upgrade services provided under this agreement, PRC will be delivering, installing, and integrating both the hardware and software essential for the successful completion of the project. Additionally, PRC will provide limited time warranties on both the hardware and software provided under this agreement.

This agreement with PRC provides that the County of Los Angeles has no obligation to pay for expenditures incurred by PRC beyond the agreement amount. Further, PRC will not be asked to perform services which exceed the agreement amount, scope of work, or contract dates.

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PRC has been notified and is in compliance with the Los Angeles County Child Support Compliance Program. Verification has been made through the Department of Child Support Services. Additionally, PRC has been notified and is in compliance with all other Board, Chief Administrative Office, and County requirements.

County Counsel has reviewed and approved this agreement as to form, and concurs with the Sheriff's Department's recommendation that Proposition A does not apply to the services that will be provided under this agreement.

The Chief Information Office has reviewed and approved this agreement.

CONTRACTING PROCESS

As evidenced by the Advance Notice addressed to the Board of Supervisors, dated June 27, 2001 (Attachment 1), PRC is a sole source vendor. Over the last three decades, the Department has contracted with PRC to establish, as well as upgrade, the Department's JDIC system. Although the Department maintains ownership of all JDIC hardware and customized software provided under the previous agreements, PRC retains a proprietary right in the basic JDIC switching software and source code. Consequently, PRC is the only vendor who can adjust, alter, or modify the Department's JDIC system.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

In the event that the Department does not perform these system upgrade services, the Department and all CLETS subscribing agencies within the County of Los Angeles will not have the capability of utilizing the potential transmitted images. Additionally, with the increased levels of data placed on the unmodified system, severe system degradation and/or failure will result.

Should the JDIC system experience failure, the Department will fail to be in compliance with California Government Code Sections 15161 and 15163, Chapter 2.5, which mandates that the Department serve as the County's CLETS

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control agent and provide CLETS access to all subscribing agencies.
The resulting inability of law enforcement agencies to access CLETS would have a negative impact on officer and public safety.

The completion of these upgrade services will ensure successful fulfillment of this particular portion of the Department's Business Automation Plan (BAP).

The services performed by PRC under this agreement will have no negative impact on any other current Departmental services and/or projects.

CONCLUSION

Upon approval by your Board, please return an adopted copy of this action and two originally executed copies of this agreement to the Sheriff's Department, Contracts Administration Unit for further processing.

Respectfully submitted,

Reviewed by,

LEROY D. BACA
SHERIFF

Jon W. Fullinwider
Chief Information Officer
(See attached analysis)

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LDB:PKT:AL:PAH:JT:JC:rfm

(Administrative Services Division - Contracts Administration Unit)

c: Justice Deputies
Executive Officer, Board of Supervisors
Lloyd W. Pellman, County Counsel
J. Tyler McCauley, Auditor-Controller
Jon W. Fullinwider, Chief Information Office
Brian Mahan, Departmental Analyst, Chief Administrative office
Paul K. Tanaka, Chief, Administrative Services Division
Andrew Lamberto, A/Asst Division Director, Administrative Services
Division
Patricia A. Hawkins, Director, Fiscal Administration
Judi Thomas, Assistant Director, Fiscal Administration
Marvin J. Dixon, Chief, Technical Services Division
Scott D. Edson, Lieutenant, Data Systems Bureau
Joe Cruz, Manager, Contracts Administration Unit
, Irma Cobos, Assistant Manager, Contracts Administration Unit
Karen W. Ruis, Data Systems Bureau
Chrono file

CIO ANALYSIS

JUSTICE DATA INTERFACE CONTROLLER (JDIC) SYSTEM UPGRADE

CIO RECOMMENDATION: ☐ APPROVE ☒ APPROVE WITH MODIFICATION
☐ DISAPPROVE

Contract Type:

☒ New Contract ☐ Contract Amendment ☐ Contract Extension
☒ Sole Source Contract

New/Revised Contract Term: Base Term: 9 Months # of Options 1: 6 Months

Contract Components:

☒ Software ☒ Hardware ☒ Telecommunications
☒ Professional Services

Project Executive Sponsor: Chief Marvin Dixon

Budget Information :

Y-T-D Contract Expenditures	\$0
Requested Contract Amount	\$944,823
Aggregate Contract Amount	\$944,823

Project Background:

Yes	No	Question
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Is this project legislatively mandated? Yes, California Government Code, Section 15161 and Section 15163, and the California Department of Justice's mandate requires that all users of the CLETS system update their current systems.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Is this project subvented? If yes, what percentage is offset? The Remote Access Network (RAN) Board has approved funding for these services. There will be no net cost incurred by the County.

Strategic Alignment:

Yes	No	Question
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Is this project in alignment with the County of Los Angeles Strategic Plan? Yes, the system upgrade services provided by PRC support the County's Strategic Plan Goals for Organizational Effectiveness, specifically Strategy 2: Improve Internal Operations.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Is this project consistent with the currently approved Sheriff's Department FY 2002-2003 Business Automation Plan? Yes, the project is identified in the Sheriff's 2002-2003 Business Automation Plan.

Strategic Alignment, continued:

Yes	No	Question
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Does the project's technology solution comply with County of Los Angeles I/T Strategic Directions Document? Yes: Conduct Government Electronically.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Does the project technology solution comply with preferred County of Los Angeles IT Standards? Yes, the project utilizes an Oracle database.

Project/Contract Description:

The contract is a sole source agreement with PRC Public Sector (PRC), Inc. to provide system upgrade services to the Sheriff's Department's Justice Data Interface Controller (JDIC) system for an initial period of nine (9) months with the option to automatically extend for an additional six (6) month period at a maximum agreement amount not to exceed \$944,823.

The project will upgrade the Sheriff's Department's Justice Data Interface Controller (JDIC) system that resides with the Los Angeles County Sheriff's Department with new functionality and technology. This upgrade has been at the request and specifications of the California Department of Justice and the National Crime Information Center (NCIC), a subdivision of the Federal Bureau of Investigation.

Project Background:

The Los Angeles County Sheriff's Department is the California Department of Justice's (DOJ) designated recipient of information from the California DOJ's California Law Enforcement Telecommunications System (CLETS) for the County of Los Angeles. The Sheriff's Department is responsible for dispersing CLETS information to the County's District Attorney's Office, the Probation Department and Los Angeles Superior Courts.

PRC Public Sector (PRC), Inc. owns the basic JDIC switching software and source code for the JDIC system. PRC is the only contractor who can upgrade the JDIC system. Over the years, PRC has customized the software per the request of Los Angeles County. The County owns these customizations and the hardware supporting the software. As part of the system upgrade services provided under this agreement, PRC will be delivering, installing, and integrating both hardware and software essential for the successful completion of the project.

The sole source Agreement requires a two-week notice of intent to negotiate a sole source agreement to be filed with your Board. The Sheriff's Department filed with your Board an advance notice to negotiate this sole source agreement on June 27, 2001.

California's DOJ, in response to a request from the National Crime Information Center (NCIC), a subdivision of the Federal Bureau of Investigation, has upgraded its CLETS software to accommodate new functionality and technology. California's DOJ is now requesting that the designated California county recipient of CLETS information also comply with the same mandate.

Project Justification/Benefits:

The benefits of the project include maintaining compatibility with California DOJ's CLETS system and increasing the JDIC system's functionality and technology. The upgrade will also produce increased effectiveness for County CLETS users who are using the new functionality and technology.

Project Metrics

Project metrics will be the deliverables and milestones as defined by the project's control document that is required by the project's Statement of Work. Tasks and milestones within the Statement of Work (SOW) require the development of the following documents:

- Project Implementation Plan to be produced and accepted by the County's Project Director within 30 days of the contract's approval. The plan will describe all tasks and milestones with their corresponding start and end dates.
- Acceptance Test Plan to be produced and accepted by the County's Project Director by the due date established within the Project Implementation Plan. The plan will describe the system acceptance process, acceptance criteria and test procedures.
- Project Cut Over Plan to be produced and accepted by the County's Project Director by the due date established within the Project Implementation Plan. The plan will describe the preparation work necessary for migrating to the new system.
- Site Preparation Plan to be produced and accepted by the County's Project Director by the due date established within the Project Implementation Plan. The plan will describe spatial requirements and power consumption for any new hardware.
- Monthly Status Reports to be produced and accepted by the County's Project Director. These status reports contain the tasks and services completed and those remaining outstanding, issues to be resolved, summary of monies paid, monies due and monies remaining in the project's budget.
- Upon final acceptance, CLETS information from the DOJ will now include images as well as text to improve the effectiveness of CLETS users.

Impact If Project Is Not Approved

The impact of not approving the request for upgrading the JDIC system may produce system degradation due to incompatible functionality and technology with California DOJ's CLETS system. Information and images flowing from the DOJ's CLETS system may be incompatible with the equipment within the Sheriff's Department and may cause JDIC system response time degradation or system failure. The system degradation or system failure would become a public safety issue as the CLETS information contains criminal background and activity information.

Should the JDIC system experience failure, the Sheriff's Department would not be in compliance with California Government Code Sections 15161 and 15163, Chapter 2.5, which mandates that the Sheriff's Department serve as the state's CLETS county control agent and provide CLETS access to all County criminal justice agencies. The resulting inability of law enforcement agencies to access CLETS would have a negative impact on officer and public safety.

Alternatives Considered:

One alternative considered was the replacement of the whole system. This process would involve the preparation of new system specifications, the preparation of a Request For Proposal (RFP), Issuance of the RFP, the scoring of the responses to the RFP and contract negotiations with a new vendor. The internal costs and time length as well as the new system costs make this an unattractive choice.

Another unattractive alternative was to decline the DOJ's mandate for upgrading the JDIC system. Declining to upgrade would risk potential system incompatibilities. Again, information and images flowing from the DOJ may not be compatible with the equipment within the Sheriff's Department and may cause system response time degradation or system failure. The system degradation or system failure would become a public safety issue as the CLETS information flow contains criminal background and activity information.

Project Risks:

The risks associated with this project are minimal. PRC owns the software, has worked with the DOJ to complete functional testing of the JDIC system and has accomplished these same JDIC systems upgrades in numerous California jurisdictions.

Risk Mitigation Measures:

To mitigate any risks associated with the implementation, PRC is required to meet the functional performance tests and reliability tests as defined in the project's Statement of Work for system acceptance. These tests will be conducted prior to any transition to the new system.

Financial Analysis:

The total amount of the hardware, software and services provided under this proposed Agreement is \$944,823. The purchasing and installation of computer hardware and equipment for the project is a maximum of \$369,612. The total amount for software development and services is a maximum of \$525,211. The project's deliverables and payment schedule for the hardware procurement, software development and services are found in Exhibit B of the proposed Agreement.

The contract has a maximum payable contingency amount of \$50,000, which brings the total maximum expenditure amount to \$944,823.

CIO Concerns:

Recent industry communications have indicated that the computer hardware specified in Exhibit B may come to the end of its production life cycle in 2004, and may not be supported in future years. Industry communications have also indicated that replacement hardware for this computer hardware may not be available for another 12 months.

CIO Recommendations:

Consistent with the provisions under Paragraph 5.0, Changes and Amendments of the proposed Agreement, the Sheriff may process a Change Notice that does not change the scope, price, duration of the Agreement, etc..

This office recommends that the Sheriff investigate, in conjunction with the CIO, possible successor hardware and, if feasible, revise Exhibit B through a Change Notice to include the new hardware and installation charges as long as the total dollars for the new hardware does not exceed the current amount for the hardware detailed in Exhibit B.

My office supports this action and recommends approval by the Board.

CIO APPROVAL

Date Received: _____

Prepared by: _____

Date: _____

Approved: _____

Date: _____

COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT

AGREEMENT FOR SYSTEM UPGRADE SERVICES TO THE SHERIFF'S DEPARTMENT'S JUSTICE DATA INTERFACE CONTROLLER SYSTEM

1.0 PURPOSE

This Agreement is made and entered into as of the Effective Date, by and between the County of Los Angeles (hereinafter "COUNTY") and PRC Public Sector, Incorporated, a Delaware Corporation (hereinafter "CONTRACTOR") for system upgrade services and with regard to the following (hereinafter the "Recitals"):

- A. WHEREAS, the COUNTY Sheriff's Department (hereinafter "LASD") serves as the State's California Law Enforcement Telecommunications System (CLETS) County Control Agent in accordance with California Government Code Sections 15161 and 15163, Chapter 2.5;
- B. WHEREAS, LASD complies with this requirement to provide CLETS access via the Justice Data Interface Controller (JDIC) system;
- C. WHEREAS, LASD has received notice from CLETS Administration Section (CAS), a division of the California Department of Justice, that all users must upgrade their current CLETS system;
- D. WHEREAS, CONTRACTOR established LASD's current JDIC system and owns a proprietary interest in the basic switching software and source code;
- E. WHEREAS, the COUNTY is authorized by California Government Code Section 31000 to contract for special services, including the type of services described herein;
- F. WHEREAS, CONTRACTOR warrants and represents that it has the professional skills, capabilities, and experience necessary to accomplish the foregoing and to provide the services, features, and functionality described in this Agreement and the Exhibits attached hereto.

NOW THEREFORE, in consideration of the foregoing, all of which are incorporated as a part of this Agreement, and the mutual covenants of the parties as set forth below, the parties hereto hereby further agree as follows:

2.0 APPLICABLE DOCUMENTS

2.1 The Agreement

This base document, along with Exhibits A, B, C, and D attached and incorporated herein by reference, collectively form, and shall be referenced to as, the "Agreement." Exhibits A through D shall be referred to individually and collectively below as the "Exhibits." In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, subtask, deliverable, good, service, or other work, between this base document of this Agreement and the Exhibits, or between Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to this base document and then to the Exhibits according to the following priority:

- A. Exhibit A - Statement of Work
- B. Exhibit B - Upgrade Services Rates and Fees
- C. Exhibit C - CONTRACTOR Employee Acknowledgment and Confidentiality Agreement
4. Exhibit D - CONTRACTOR's EEO Certification

2.2 Entire Agreement

This Agreement shall constitute the complete and exclusive statement of understanding between the parties which supersedes any and all previous agreements, whether written or oral, and all communications between the parties relating to the subject matter of this Agreement.

2.3 Statement of Work

Pursuant to the terms of this Agreement, CONTRACTOR shall provide to COUNTY System upgrade services to the COUNTY's JDIC system. CONTRACTOR shall modify the existing JDIC system software and ensure complete functionality on the new hardware and operating system software. To the extent any existing COUNTY module or functionality is not being replaced pursuant to this Agreement, the System shall fully interface with such existing module or functionality. In addition, CONTRACTOR shall provide the training, data conversion, interface development, change management, maintenance and support, and (to the extent applicable) technology infrastructure items (e.g. minor hardware, database licenses) required by or contemplated under this Agreement. All development and testing of the System, through Final Acceptance shall be performed at the Project Site.

The Project Site shall be provided and maintained by COUNTY. Upon Final Acceptance, CONTRACTOR shall fully cooperate with and assist COUNTY in transitioning the hosting of the System to a location designated by COUNTY in Los Angeles County.

3.0 DEFINITIONS

The following terms and phrases in quotes and with initial letters capitalized shall have the following specific meaning when used in this Agreement, throughout and hereinafter.

3.1 Acceptance

“Acceptance” shall mean the date on which COUNTY issues a certificate of completion pursuant to Section 16.0 (SYSTEM ACCEPTANCE TESTS), or other testing as provided in Exhibit A (Statement of Work).

3.2. Baseline Application Software

“Baseline Application Software” shall mean the application software being developed, altered, upgraded, and/or updated, exclusive of any vendor supplied or third party software that may be required for system operation.

3.3 CONTRACTOR’s Project Director

“CONTRACTOR’s Project Director” shall have the meaning specified in Subsection 7.1 (CONTRACTOR’s Project Director).

3.4 CONTRACTOR’s Project Manager

“CONTRACTOR’s Project Manager” shall have the meaning specified in Subsection 7.2 (CONTRACTOR’s Project Manager).

3.5 COUNTY’s Project Director

“COUNTY’s Project Director” shall have the meaning specified in Subsection 6.1 (COUNTY’s Project Director).

3.6 COUNTY’s Project Manager

“COUNTY’s Project Manager” shall have the meaning specified in Subsection 6.2 (COUNTY’s Project Manager).

Day(s)

“Day” and/or “Days” whether used with the initial capitalization or not, whether singular or plural, shall mean business day(s), and not calendar day(s), unless otherwise expressly specified.

3.8 Deficiency(ies)

“Deficiency” and/or “Deficiencies,” whether singular or plural, shall mean any of the following: any defect, whether in design, development, implementation, materials, programming, workmanship or otherwise; any error; any level of performance that is commercially unreasonable; any omission; any impairment in the operation or performance of any of COUNTY’s other hardware or software beyond any such impact specifically permitted in the Specifications; any deviation from published or mutually agreed upon standards; any deviation from any of the requirements or from any COUNTY accepted Deliverables; or any other problem which results in System not continuously performing in accordance with the provisions of this Agreement, including, without limitation, the Specifications. Any of the foregoing shall not be deemed a Deficiency to the extent and only to the extent that they are the result of any of the following:

- A. The negligent or intentional misuse of the System by any User which is inconsistent with the Documentation provided by CONTRACTOR and Accepted by COUNTY.
- B. The improper performance or non-performance of any hardware or software that COUNTY provides, except to the extent that the same has been specified or recommended by CONTRACTOR (including without limitation the Baseline Application Software).
- C. The negligent or intentional act of any User to modify the Application Software (but excluding any configuration or settings changes in accordance with provided options) without CONTRACTOR’s prior written approval.
- D. The intentional introduction by any third party other than CONTRACTOR (or CONTRACTOR’s employees or agents) of any Disabling Device into any computer on which the Application Software is installed, except that this subpart (D) shall not apply to the extent that the System should have prevented or detected introduction of the disabling device.

Deliverable(s)

“Deliverable” shall mean an item and/or a service to be provided by CONTRACTOR under this Agreement, including, without limitation, those identified as a numbered deliverable or sub-deliverable in Exhibit A (Statement of Work).

3.10 Disabling Device

“Disabling Device” shall mean any device (e.g. computer code) entered into the System or programmed as part of the application that disables the operation of the application (e.g. blocking user from logging on) that is activated either currently or in the future (e.g. upon reaching a certain calendar date). _____

3.11 Documentation

“Documentation” shall mean all CONTRACTOR’s training course materials, System specifications and technical manuals, and all other user instructions regarding the capabilities, operation, installation, and use of the System, including, but not limited to, manuals, handbooks, flowcharts, technical information, and other reference materials relating to a System Component.

3.12 Down Time

“Down Time” shall mean the period of time that the system is not available for operation.

3.13 Effective Date

“Effective Date” shall mean the date of execution of this Agreement by COUNTY’s Board of Supervisors.

3.14 Effectiveness Level

“Effectiveness Level” shall be calculated and/or determined by dividing the total number of hours of system availability by the total number of processing hours multiplied by one hundred.

3.15 Equipment

“Equipment” shall mean the hardware, software, and equipment provided by CONTRACTOR to COUNTY hereunder and otherwise, so that COUNTY may achieve the goals set forth herein.

Existing Systems

“Existing Systems” shall mean the system utilized by the Sheriff for the JDIC System.

3.17 First Productive Use

“First Productive Use” shall mean the first use of the modified System to process data. First Productive Use of the System shall not occur prior to the start of the System Reliability Test, as described in Section 16.0 (SYSTEM ACCEPTANCE TESTS).

3.18 Implementation

“Implementation” shall mean the process by which the System is installed, implemented, and adapted for use by COUNTY as provided in this Agreement.

3.19 Interface

“Interface” shall mean a program, including protocols and connections necessary for data processing communications between one software product and another.

3.20 Licensed Software

“Licensed Software” shall mean individually each, and collectively all, of the computer programs or modules provided by CONTRACTOR under this Agreement, including third party software, as identified in Exhibit A (Statement of Work), Task 14.0, including as to each program or module; the processes and routines used in the processing of data, the source code and object code, tapes, disks, Documentation, corrections, updates, enhancements, improvements, releases, and versions to such programs or modules as may generally be made available by CONTRACTOR, and any and all programs or modules provided by CONTRACTOR in the future under this Agreement pursuant to the mutual written agreement of the parties.

3.21 Project Implementation Plan

“Project Implementation Plan” shall mean the plan described in Exhibit A (Statement of Work), Task 1.0 for transitioning of the Existing System to the System and implementing the System.

3.22 Services

“Services” shall mean all services, tasks, and deliverables to be performed or delivered by CONTRACTOR hereunder, including, without limitation, those specified in Exhibit A (Statement of Work). Reference to the Services may include any or all of the Services to be rendered by CONTRACTOR pursuant to this Agreement.

3.23 Sheriff

“Sheriff” shall mean the elected official of the Sheriff’s Department.

3.24 Source Material(s)

“Source Material” and/or “Source Materials,” whether singular or plural, shall mean the source code for the Licensed Software, including all new releases, updates, modifications, enhancements, corrections, patches and improvements, and all Documentation and other proprietary information related to the source code.

3.25 Specifications

“Specifications” shall mean any or all of the following, as applicable:

- A. All System and Service performance requirements, expectations, and standards set forth in this Agreement;
- B. All specification reports included in Exhibit A (Statement of Work);
- C. All specifications identified as such by CONTRACTOR, but only to the extent (i) not inconsistent with any of the foregoing in Subparts (1) and/or (2) of this Subsection 3.25, and (ii) acceptable to COUNTY in its sole and absolute discretion;
- D. The Documentation, but only to the extent not inconsistent with any of the foregoing in Subparts (1), (2), and/or (3) of this Subsection 3.25.

3.26 Subcontractor

“Subcontractor” shall mean any person, entity, or organization to which CONTRACTOR proposes to delegate, or has delegated, any of its obligations hereunder in accordance with Section 22.0 (SUBCONTRACTING).

3.27 System

“System” shall mean the operation of all System Components in a functionally integrated manner, with each System Component interfacing with the others in accordance with the Specifications.

3.28 System Acceptance Test(s)

“System Acceptance Test” and/or “System Acceptance Tests,” whether singular or plural, shall mean each and every test described in Section 16.0 (SYSTEM ACCEPTANCE TESTS) of this Agreement, and by reference therein, Exhibit A (Statement of Work), Task 10.0.

3.29 System Component(s)

“System Component” and/or “System Components,” whether singular or plural, shall mean individually each, and collectively all, of the Licensed Software (including all Custom Programming), Services, Interfaces, and the Equipment.

3.30 System Software Development

“System Software Development” shall mean development of and alteration of existing Licensed Software, or the writing of new Source Materials by CONTRACTOR specifically for COUNTY at COUNTY’s request and identified as System Software Development in Exhibit A (Statement of Work), Task 7.0.

3.31 Term

“Term” shall mean the Initial Term, and the Month-to-Month Extensions, to the extent COUNTY exercises its option pursuant to Section 4.0 (TERM).

3.32 Users

“Users” shall mean any individual or entity authorized by COUNTY to use the System or a System Component under this Agreement.

4.0 TERM

4.1 General

The term of this Agreement shall commence upon the Effective Date and shall continue for a period of nine (9) months thereafter (the “Initial Term”), unless sooner terminated as provided herein. At the end of the Initial Term of this Agreement, COUNTY may, at its option, extend this Agreement on a month-to-month basis for a maximum period of six (6) months. COUNTY shall be deemed to have exercised its extension option(s) automatically, without further act, unless, no later than 60 days prior to the expiration of the Initial Term, it

notifies CONTRACTOR in writing that it elects not to extend the term pursuant to this Section 4.0.

4.2 Month-to-Month Extensions

COUNTY, in its sole discretion, may extend the Agreement on a month-to-month basis for a maximum period of six (6) months following the Initial Term.

5.0 **CHANGES AND AMENDMENTS**

5.1 Entire Agreement

This Agreement, as defined in Section 2.0 (APPLICABLE DOCUMENTS), constitutes the complete and exclusive agreement between the parties, superseding any and all previous and contemporaneous agreements, whether written or oral, and any and all communications between the parties, relating to the subject matter of this Agreement. COUNTY reserves the right to initiate change to any provision of this Agreement. All such changes shall be accomplished only by mutually signed writings, as provided under this Section 5.0.

5.2 Amendments

5.2.1 For any change which affects the scope of work, period of performance, payments, Contract Sum, and/or any term or condition included in this Agreement, a negotiated Amendment to this Agreement must be approved and executed by the COUNTY Board of Supervisors to be enforceable.

5.2.2 For any change which does not affect the scope of work, period of performance, payments, or any rights or obligations of this Agreement, a Change Notice shall be prepared and executed by COUNTY's Project Director and CONTRACTOR's Project Manager.

5.2.3 Notwithstanding any other provisions of this Section 5.0, to the extent that extensions of time for CONTRACTOR performance do not impact either the scope of work or cost of this Agreement, COUNTY's Project Director or designee may, in his/her sole discretion, grant CONTRACTOR no-cost extensions of time, provided that the aggregate of all such extensions during the term of this Agreement shall not exceed ninety (90) days. CONTRACTOR agrees that such extensions shall not change any other term or condition of this Agreement during the period of such extensions.

Facsimile Signatures Acceptable

COUNTY and CONTRACTOR hereby agree to regard facsimile representations of original signatures of authorized officials of each party, when appearing in appropriate places on documents prepared pursuant to this Agreement and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to such documents, such that the parties need not follow up facsimile transmissions of such documents with subsequent, non-facsimile transmission of "original" versions of such documents.

6.0 ADMINISTRATION OF AGREEMENT - COUNTY

6.1 COUNTY's Project Director

- 6.1.1 COUNTY's Project Director for this Agreement shall be the following person or his/her designee:

Lieutenant Scott Edson
Los Angeles County Sheriff's Department
Data Systems Bureau
12440 E. Imperial Highway
Norwalk, CA 90650

- 6.1.2 COUNTY shall notify CONTRACTOR in writing of any change in the name or address of COUNTY's Project Director.
- 6.1.3 COUNTY's Project Director shall be responsible for COUNTY's performance of its tasks under this Agreement.
- 6.1.4 COUNTY's Project Director shall meet or confer with CONTRACTOR's Project Director and Project Manager on a regular basis.
- 6.1.5 Except as expressly set forth in this Agreement, COUNTY's Project Director is not authorized to make any changes in any of the terms or conditions of this Agreement and is not authorized to further obligate COUNTY in any respect whatsoever.
- 6.1.6 COUNTY's Project Director shall have the right at all times to inspect any and all Equipment, Services, and/or other work provided by or on behalf of CONTRACTOR.

6.2 COUNTY's Project Manager

- 6.2.1 COUNTY's Project Manager for this Agreement shall be the following person or his/her designee:

Karen W. Ruis, Data Processing Specialist I
Los Angeles County Sheriff's Department
Data Systems Bureau
1277 North Eastern Avenue
Los Angeles, CA 90063

- 6.2.2 COUNTY shall notify CONTRACTOR in writing of any change in the name or address of COUNTY's Project Manager.
- 6.2.3 COUNTY's Project Manager shall be responsible for ensuring that the technical standards and requirements of CONTRACTOR's performance under this Agreement are met.
- 6.2.4 COUNTY's Project Manager is not authorized to make any changes in any of the terms and conditions of this Agreement and is not authorized to further obligate COUNTY in any respect whatsoever.
- 6.2.5 COUNTY's Project Manager shall advise COUNTY's Project Director as to CONTRACTOR's performance in areas relative to requirements and technical standards.

6.3 COUNTY Personnel

Unless otherwise stated in this Agreement, all COUNTY personnel assigned to this Agreement shall be under the exclusive supervision of COUNTY. Except as otherwise provided in this Agreement, CONTRACTOR understands and agrees that all such COUNTY personnel are assigned only for the convenience of COUNTY. CONTRACTOR hereby represents that its rates and fees, performance levels, and Specifications hereunder are based solely on the work of CONTRACTOR's personnel, except as otherwise expressly provided by this Agreement.

6.4 Approval of Work

All Equipment, Services, and other work provided by CONTRACTOR must have the approval of COUNTY's Project Director, COUNTY's Project Manager, or their designees, whose approval shall be provided or denied in a timely manner pursuant to the circumstances and the procedures set forth in this Agreement. In no event shall COUNTY be liable or responsible for any payment prior to such approval.

7.0 ADMINISTRATION OF AGREEMENT - CONTRACTOR

7.1 CONTRACTOR's Project Director

CONTRACTOR's Project Director shall be the following person and shall be a full-time employee of CONTRACTOR:

Yuping Luo, Encore Manager
PRC Public Sector, Incorporated
946 Town and Country Road
Orange, CA 92668

7.1.2 CONTRACTOR's Project Director shall be responsible for CONTRACTOR's performance of all its obligations hereunder and CONTRACTOR's compliance with this Agreement.

7.1.3 CONTRACTOR's Project Director shall meet or confer on a regular basis with CONTRACTOR's Project Manager and COUNTY's Project Manager.

7.2 CONTRACTOR's Project Manager

7.2.1 CONTRACTOR's Project Manager shall be the following person and shall be a full-time employee of CONTRACTOR:

Michael Bergdahl
PRC Public Sector, Incorporated
946 Town and Country Road
Orange, CA 92668

7.2.2 CONTRACTOR's Project Manager shall be responsible for CONTRACTOR's day-to-day activities as related to this Agreement, and for reporting to COUNTY in the manner set forth in Subsection 7.6 (Reports by CONTRACTOR).

7.2.3 CONTRACTOR's Project Manager shall meet or confer on a regular basis with COUNTY's Project Director and COUNTY's Project Manager.

7.3 Approval of CONTRACTOR's Staff

COUNTY shall have the right to approve or to disapprove any member of CONTRACTOR's project staff assigned to perform under this Agreement. Should the COUNTY's Project Manager be dissatisfied with the performance, competence, responsiveness, capabilities, cooperativeness, or fitness for a particular task of any person assigned by CONTRACTOR to perform Services under this Agreement, including the CONTRACTOR's Project Manager, the COUNTY's Project Manager may request the replacement of that person. The replacement request shall be in writing, and upon receipt of the request, CONTRACTOR shall make reasonable efforts to furnish a qualified replacement

within fifteen (15) business days. In the event CONTRACTOR should ever need to remove any staff from performing services under this Agreement, CONTRACTOR shall provide COUNTY with adequate notice, except in circumstances in which such notice is not possible, and shall work with COUNTY on a mutually agreeable transition plan so as to provide an acceptable replacement and ensure project continuity. CONTRACTOR agrees that all project staff assigned to this Agreement must have experience with installations where they were responsible for performing the tasks assigned under this Agreement. In the event that, as a result of the actions or inaction of CONTRACTOR's project staff, additional work is required to perform this Agreement, CONTRACTOR shall perform all such work at no additional charge to COUNTY. In addition, CONTRACTOR represents and warrants that it will, to the maximum extent possible, take all necessary steps to assure continuity over time of the membership of the group constituting CONTRACTOR's project staff. CONTRACTOR shall promptly fill any staff vacancy with personnel having qualifications at least equivalent to those of the project staff member(s) being replaced.

7.4 Performance Levels

7.4.1 General

CONTRACTOR shall meet or exceed the performance levels set forth in this Agreement, including without limitation, Exhibit A (Statement of Work). Any failure to meet such performance levels shall be deemed to be a breach of this Agreement and shall entitle COUNTY to the rights, credits, and penalties set forth herein.

7.4.2 Deficiency Corrections

CONTRACTOR shall satisfactorily correct, at no cost to the COUNTY, all Deficiencies in the Services, Equipment, and/or Documentation. CONTRACTOR shall repair or correct such Deficiencies upon receipt of notice from the COUNTY, and CONTRACTOR shall be solely liable for any reasonable costs incurred by the COUNTY associated with correction of such Deficiencies.

7.4.3 Credits to COUNTY

For each and every occasion upon which a Deliverable has not been completed by CONTRACTOR within fifteen (15) days after the due date for such Deliverable, other than as a result of delays caused by acts or omissions of COUNTY, as determined by COUNTY's Project Director in his/her sole judgment, COUNTY shall receive a credit against any or all amounts due to CONTRACTOR, under this Agreement or otherwise, in the total amount of Five Thousand Dollars (\$5,000) for each day after the due date for such deliverable until a total of ten percent (10%) of the Maximum Contract Amount, as identified in Section 14.0 (MAXIMUM CONTRACT AMOUNT, RATES, AND CHARGES) is credited to COUNTY. Under this Subsection 7.4.3, Maximum Contract Amount shall not include the \$50,000 Contingency amount. Upon accumulation of such amount, credits to COUNTY shall cease until final acceptance of the modified System by COUNTY. All of the foregoing credits shall apply separately, and cumulatively, to each Deliverable in Exhibit B. A Deliverable shall be deemed completed for purposes of this Subsection 7.4.3 on the earliest date that all of the tasks, subtasks, Deliverables, goods, Services and other work required for the completion of such Deliverable are completed and delivered to COUNTY, provided that all of such tasks, subtasks, Deliverables, goods, services and other work required for the completion of such Deliverable are thereafter approved in writing by COUNTY pursuant to Subsection 6.4 (Approval of Work). For purposes of this Subsection 7.4.3, the determination of whether a Deliverable has been so completed and is so approved, and of the date upon which such Deliverable was completed, will be made by COUNTY's Project Director as soon as practicable after COUNTY is informed by CONTRACTOR that such Deliverable has been completed and is given all the necessary information, data and documentation to verify such completion.

7.4.4 Review of Performance Levels

COUNTY will perform, at the discretion of its Project Director, periodic reviews of System and Services to ensure compliance with Performance Levels.

7.5 COUNTY/CONTRACTOR Meetings

Monthly meetings shall be held to review the status of all Services and System Components being provided hereunder and to resolve any issues that arise.

7.5.1 Management Meeting

CONTRACTOR's Project Director, Project Manager, and other management personnel, and COUNTY's Project Director, Project Manager, and other management personnel shall meet together on a monthly basis to review CONTRACTOR's performance hereunder. CONTRACTOR shall arrange for the meeting location, prepare an agenda for each meeting, and record and publish minutes and assignments to all the participants.

7.6 Reports by CONTRACTOR

In order to monitor the status, performance, and quality of the Services and System, CONTRACTOR shall provide COUNTY's Project Director and COUNTY's Project Manager with various written reports as described in Exhibit A (Statement of Work) which shall include, but not be limited to:

7.6.1 Project Implementation Plan

7.6.1.a Project Schedule

7.6.1.b Acceptance Test Plan

7.6.1.c Project Cut Over Plan

7.6.2 Site Preparation Plan

7.6.3 Monthly Status Reports

Each of such reports shall be delivered in three (3) copies, together with a formal transmittal letter to COUNTY's Project Manager executed by CONTRACTOR's Project Manager.

8.0 **SERVICES AND OTHER WORK**

8.1 General

The COUNTY hereby retains CONTRACTOR to provide system upgrade services to the COUNTY's Justice Data Interface Controller (JDIC) system. CONTRACTOR shall modify the existing JDIC System software to run on the new hardware and operating system software. In addition to providing upgrade services, CONTRACTOR shall provide all necessary documentation, software

developments, System Acceptance Testing, training, warranties, and Software Licenses required under this Agreement on a timely basis, as more fully described in Exhibit A (Statement of Work).

8.2 Access to COUNTY Facilities

CONTRACTOR, its employees, and agents may be granted access to COUNTY facilities, subject to compliance with COUNTY's standard administrative and security requirements, for the purpose of executing CONTRACTOR's obligations hereunder. Access to COUNTY facilities shall be restricted to normal COUNTY business hours 7:00 a.m. to 5:00 p.m., Monday through Friday, COUNTY observed holidays excepted. Access to COUNTY facilities outside normal business hours must be approved in advance by COUNTY's Project Manager, which approval will not be unreasonably withheld. CONTRACTOR shall have no tenancy or any other property or other rights in COUNTY facilities. While present at COUNTY facilities, CONTRACTOR's personnel shall be accompanied by COUNTY personnel, unless otherwise specified prior to such event by COUNTY's Project Manager or his/her designee. All CONTRACTOR personnel shall carry and produce, when requested, a valid CONTRACTOR identification card.

8.3 Project Implementation Plan

CONTRACTOR shall prepare and present to COUNTY, within six (6) weeks of the Effective Date, a detailed Project Implementation Plan. The Project Implementation Plan must include a schedule of all project milestones and must also provide a description of all tasks, sub-tasks and activities necessary to complete each milestone and their projected start and completion dates. COUNTY shall have the right, for a period of thirty (30) days after receipt of the Project Implementation Plan, to terminate this Agreement on written notice to CONTRACTOR if, in the opinion of COUNTY and in its sole judgement, the Project Implementation Plan is not satisfactory, or carrying out the Project Implementation Plan is not in the best interest of COUNTY. Upon any such termination (i) CONTRACTOR shall be required to repay to COUNTY all amounts, if any, paid by COUNTY to CONTRACTOR hereunder, and (ii) except as otherwise provided in this Agreement, neither party shall have any further obligation to the other under this Agreement.

8.4 Unapproved Work

If CONTRACTOR provides any products, services, documents, or work to COUNTY other than those specified in this Agreement, or if CONTRACTOR provides such items requiring COUNTY's prior written approval without first having obtained such written approval, the same shall be deemed to be a gratuitous effort on the part of CONTRACTOR and CONTRACTOR shall have no claim whatsoever against COUNTY thereof.

8.5 Right to Reject

COUNTY reserves the right to reject any System Component, Service, Documentation, and/or other work not approved by COUNTY pursuant to Subsection 6.4 (Approval of Work) or other provisions of this Agreement.

8.6 Training

CONTRACTOR shall provide the COUNTY with Systems Operator's training as described in Exhibit A (Statement of Work), Task 12.0. Any training materials developed by CONTRACTOR specifically for COUNTY shall be owned by COUNTY and shall be considered work made for hire by CONTRACTOR for COUNTY. COUNTY shall own all United States and international copyrights in the training materials. CONTRACTOR agrees to assign to COUNTY, its successors, and assigns ownership of all United States and international copyrights in the training materials, insofar as any such training materials, by operation of law, may not be considered work made for hire by CONTRACTOR for COUNTY.

MAINTENANCE RESPONSIBILITY OF COUNTY

- 9.1 COUNTY shall notify CONTRACTOR immediately upon discovery of System Deficiency and shall, subject to the COUNTY's security regulations, policies, and restrictions, permit CONTRACTOR personnel prompt and free access to the system. Access to the System may be remote electronic access by off site CONTRACTOR personnel. Such remote access shall be governed by the policies and procedures of the COUNTY regarding network and system security.
- 9.2 In the event of a Deficiency, COUNTY personnel shall be available for consultation and to answer pertinent questions of a high priority basis.
- 9.3 All necessary reference manuals, sample data, source documents, definition of terms, exceptions, and other required information shall be supplied by COUNTY to CONTRACTOR.
- 9.4 COUNTY shall perform preventive cleaning of the Covered System hardware in accordance with written instructions and schedules prepared by CONTRACTOR.
- 9.5 COUNTY personnel shall not attempt any repair or maintenance on the Covered System other than preventive cleaning while this system is under the purview of this Agreement unless previously agreed to in writing by CONTRACTOR. COUNTY shall not make or allow any person other than CONTRACTOR's maintenance personnel to make any adjustment, repair, or maintenance of the Covered System hardware, or to relocate, modify, change, or connect said hardware to other hardware or devices supplied by any person other than CONTRACTOR without prior written permission of CONTRACTOR.
- 9.6 The COUNTY shall have the following responsibilities associated with Software Support:
 - 9.6.1 Upon detection of any error in the Software, COUNTY, as requested by CONTRACTOR, agrees to provide CONTRACTOR a listing of output and any other data, including databases and backup systems, that CONTRACTOR reasonably shall request in order to reproduce operating conditions similar to those present when the error occurred.
 - 9.6.2 COUNTY shall not sell, lease, or transfer the software unless specifically authorized by the prior written consent of CONTRACTOR.
 - 9.6.3 COUNTY acknowledges that CONTRACTOR provides certain Software Support Services to COUNTY and that the Services provided by CONTRACTOR hereunder contain trade secrets proprietary to CONTRACTOR. In the course of observing Services delivered to COUNTY by CONTRACTOR, COUNTY agrees to not attempt to learn the proprietary source code, structure, algorithms, or ideas underlying the products. COUNTY agrees not to provide, lease, lend, use, or

otherwise allow anyone other than JDIC users to utilize the Services to or for the benefit of third parties.

- 9.7 COUNTY shall provide CONTRACTOR with an on-site storage and work area reasonably adjacent to the Covered System at no charge to CONTRACTOR. CONTRACTOR shall supply storage cabinets, manual racks, and other related field engineering materials, devices, and aids necessary to maintain the system in good working order.
- 9.8 COUNTY shall provide a mutually acceptable time(s) for CONTRACTOR to implement modifications after reasonable notification by CONTRACTOR that such time is required.

10.0 LICENSED SOFTWARE LICENSE

10.1 License Grant

CONTRACTOR grants to COUNTY a perpetual, worldwide, irrevocable, and non-exclusive license to use the Licensed Software and Documentation for COUNTY and its Users' business activities.

10.2 Commencement of License

The License granted herein shall commence on the date of the delivery of the Licensed Software to COUNTY, or the installation date, and the undisputed payment for such license is made as provided herein, shall continue in perpetuity and without regard to the Term of this Agreement.

10.3 Confidentiality

COUNTY shall not allow any person, company, governmental agency, consulting firm, or any other entity to have access to the software provided hereunder, other than employees of COUNTY who have a need to have access to such software in order for COUNTY to utilize such software for the purposes set forth herein. Should COUNTY allow such access without the express written consent of CONTRACTOR, CONTRACTOR may terminate COUNTY's license granted under this Agreement.

11.0 THIRD PARTY SOFTWARE

CONTRACTOR shall not incorporate into the Baseline Application Customizations or into any other software or documentation provided to COUNTY hereunder or in connection herewith any software or other materials owned by any third party (the "Third Party Software") without COUNTY's prior written consent to each specific element of Third Party Software proposed to be incorporated and to the specific use thereof. In connection with any request for such consent, CONTRACTOR shall provide to COUNTY in writing all material information pertaining to such proposed Third Party Software and the incorporation thereof. CONTRACTOR hereby represents and warrants that, upon Final Acceptance of the System, none of the Application Software, other

than any Third Party Software approved by COUNTY in accordance with the preceding sentence ("Approved Third Party Software") and the Baseline Application Software, will be owned by any third party.

Except as specifically approved in writing by COUNTY with respect to the specific details thereof: (i) CONTRACTOR shall use the Baseline Application Software in the form provided by Software Vendor; (ii) CONTRACTOR shall make no modifications or changes to the source code or object code for the Baseline Application Software that would cause the Baseline Application Software to differ from the standard software licensed by Software Vendor; (iii) all Baseline Application Customizations and the associated Documentation shall be designed to and shall be capable of allowing COUNTY to install the Baseline Application Customizations on top of the standard Baseline Application Software provided by Software Vendor and any future versions thereof; and (iv) CONTRACTOR shall modify the source code, object code or other content of any Approved Third Party Software. In connection with any request for such approval, CONTRACTOR shall provide to COUNTY in writing all material information pertaining to such request.

In the event COUNTY approves any modifications to any Approved Third Party Software, CONTRACTOR shall promptly, at no cost to COUNTY, either: (1) obtain a license from the appropriate third party which shall enable CONTRACTOR to so modify such Third Party Software, and CONTRACTOR shall provide all necessary modifications; or (2) to the extent that CONTRACTOR is unable to obtain such a license, provide an upgrade or alternative solution which is functionally equivalent, in COUNTY's Project Director's reasonable determination, in lieu of modifying such Third Party Software.

COUNTY acknowledges that it may have to execute certain third party license agreements with respect to any Approved Third Party Software. These third party license agreements shall be at no cost to COUNTY and shall include reasonable terms and conditions as determined by COUNTY. To the extent that any such third party license agreement conflicts with this Agreement as it applies to COUNTY's right to use or modify the Application Software, CONTRACTOR shall take all necessary action and pay all sums required to provide COUNTY with all of the rights to use and modify the Application Software afforded by this Agreement. CONTRACTOR represents and warrants that whether or not such third party license agreements are required to be executed or entered into by all Approved Third Party Software that permit the use and modification of the Application Software in accordance with all of the terms of this Agreement. CONTRACTOR acknowledges and agrees that the licenses acquired and delivered to COUNTY pursuant to this Section 11.0 do not and shall not in any way limit COUNTY's rights.

12.0 SYSTEM CONFIGURATION

CONTRACTOR acknowledges that it has had the opportunity to assess COUNTY's Existing Systems, including, but not limited to, its computer

platform(s), operation system(s), applications, interface engine, connectivity, and workstation configurations. CONTRACTOR has also had the opportunity to inquire of COUNTY's staff regarding the operation of the Existing System and its components, and has had the opportunity to review documentation regarding the Existing System. CONTRACTOR represents and warrants that the Existing System, together with the System, are sufficient in size, capacity, and processing capability to operate the System for the use of COUNTY and its Users as set forth in this Agreement. If equipment, applications, Interfaces, or operating systems, in addition to those in the Existing System as of the Effective Date, or included in the System, are required to support or operate the System as required by this Agreement, CONTRACTOR shall pay all costs associated with the acquisition and installation of such additional equipment, applications, Interfaces, or operating system.

13.0 MAINTENANCE AND SUPPORT

13.1 System Support Responsibilities

Upon final acceptance of the modified System and ninety (90) days thereafter, CONTRACTOR shall, at no additional charge:

- C. Correct any Deficiency in the System or any System Component, including, without limitation, defect repair, programming corrections and remedial programming, and provide such services and repairs required to maintain the System so that it operates properly and in accordance with the System Specifications.
- A. Provide unlimited telephone support and on-call maintenance twenty-four (24) hours a day, seven (7) days a week.
- B. Initiate work on application software urgent issues within two (2) hours of COUNTY's call for assistance to CONTRACTOR, regardless of time of day or day of week. Initiate work on all hardware urgent issues within twenty-four (24) hours of COUNTY's call for assistance to CONTRACTOR, regardless of time of day or day of week. Urgent issues include issues involving Deficiency or those which, in COUNTY's reasonable judgment, are critical to the operation of System. CONTRACTOR shall initiate work on non-urgent issues as soon as reasonably possible.

C. In the event CONTRACTOR fails to meet its support responsibilities under Subsection 13.1 (c), CONTRACTOR shall pay to COUNTY liquidated damages in the amount of five hundred dollars (\$500) per each hour commencing after a one (1) hour grace period until a total of ten percent (10%) of the Maximum Contract Amount, as identified in Section 14.0 (MAXIMUM CONTRACT AMOUNT, RATES, AND CHARGES) has been paid to COUNTY. Under this Subsection 13.1, Maximum Contract Amount shall not include the \$50,000 Contingency Amount. Upon accumulation of such amount, liquidated damages paid to COUNTY shall cease until final acceptance of the modified System by COUNTY. CONTRACTOR acknowledges and agrees that the liquidated damages assessed pursuant to this Section shall be payable to COUNTY upon demand and may, at COUNTY's option, be set off against any monies due to CONTRACTOR under this Agreement, and are reasonable under the circumstances existing as of the date this Agreement is entered into.

13.2 Maintenance and Support Fees

There shall be no charge to COUNTY for maintenance and support for the first ninety (90) days of the Term.

14.0 MAXIMUM CONTRACT AMOUNT, RATES, AND CHARGES

14.1 General

The total monetary amount payable by COUNTY to CONTRACTOR for supplying the System, Services, and other work specified under this Agreement, including all applicable taxes, shall not exceed \$944,823, (the "Maximum Contract Amount") The maximum contract amount is itemized as follows:

- A. Project Implementation Plan, at a maximum payable amount of \$22,720;
- B. Project Management/Monthly Status Reports, at a maximum payable amount of \$74,840;
- C. System Software Development, at a maximum payable amount of \$230,232;
- D. Purchasing and Installation of Equipment/Hardware, at a maximum payable amount of \$369,612;
- E. System Upgrade Implementation, at a maximum payable amount of \$84,694;

- F. System Acceptance Testing, at a maximum payable amount of \$79,382;
- G. System Documentation, at a maximum payable amount of \$13,709;
- H. Software Warranty, at a maximum payable amount of \$19,634; and
- I. Contingency amount, at a maximum payable amount of \$50,000.

14.2 All Fees Stated

Except as provided in this Section 14.0 (MAXIMUM CONTRACT AMOUNT, RATES, AND CHARGES), there are no other fees or costs to be paid by COUNTY under this Agreement. In particular, CONTRACTOR's attendance at User forums, Management Meetings, Service Management Meetings, and CONTRACTOR preparation of reports under Subsection 7.6 (Reports by CONTRACTOR) shall be provided at no additional cost to COUNTY.

14.3 Payment Does Not Imply Acceptance

The making of any payment or payments by COUNTY, or the receipt thereof by CONTRACTOR, shall not imply acceptance by COUNTY of the System or any System Component or Service, or the waiver of any warranties or requirements of this Agreement.

14.4 COUNTY's Obligation in Future Fiscal Years

Notwithstanding any other provision of this Agreement, COUNTY shall not be obligated for CONTRACTOR's performance hereunder, or by any provision of this Agreement during any of COUNTY's future fiscal years unless and until COUNTY's Board of Supervisors appropriates funds for this Agreement in COUNTY's Budget for each such future fiscal year. In the event that funds are not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated at no penalty or additional cost to COUNTY. COUNTY shall notify CONTRACTOR in writing of any such non-appropriation of funds at the earliest possible date.

14.5 Other Services and Products

Upon the written request of COUNTY's Project Director, made at any time and from time to time during the Term, CONTRACTOR shall provide to COUNTY other services and products. Upon COUNTY's request for such services and/or products, CONTRACTOR shall provide COUNTY, within sixty (60) days of receipt of such request, a written quotation of a maximum total price in response to COUNTY's request. CONTRACTOR's quotation shall be valid for sixty (60) days from submission.

Contingency Amount

COUNTY may utilize a total maximum contingency amount of \$50,000 for new and/or additional consideration provided at COUNTY's written request by CONTRACTOR. Such work and software enhancements shall require the advance written authorization of the COUNTY's Project Director or his/her designee through the Change Order process as stated in Section 5.0 (CHANGES AND AMENDMENTS) of this Agreement.

15.0 INVOICES AND PAYMENTS

15.1 General:

15.1.1 CONTRACTOR shall invoice COUNTY for Deliverables/Service(s) that have been provided by CONTRACTOR. All invoices for payment shall be subject to COUNTY's approval pursuant to Subsection 15.1.3 below. CONTRACTOR shall prepare invoices that shall include the charges owed to CONTRACTOR by COUNTY under the terms of this Agreement. CONTRACTOR shall submit an original and one copy of the invoice for Services to the COUNTY representatives specified below:

Original

Los Angeles County Sheriff's Department
General Accounting Section
4700 Ramona Boulevard, 3rd Floor
Monterey Park, CA 91754

Copy

Los Angeles County Sheriff's Department
Data Systems Bureau
12440 E. Imperial Highway, Suite #400 E
Norwalk, CA 90650
Attention: Lieutenant Scott Edson

15.1.2 All invoices submitted by CONTRACTOR for payment must receive the written approval of LASD's Project Manager prior to payment. Approval for payment will be given promptly for accepted work, and in the absence of irregularities, payment should be made no later than thirty (30) days following receipt of invoice. COUNTY shall not be responsible for invoice payments if any invoice is received later than ninety (90) days after the work has been completed.

15.1.3 Notwithstanding anything to the contrary contained herein, for Deliverables, COUNTY shall deduct and retain a maximum of ten percent (10%)

from specified progress payments for Services, as specified in Exhibit B

til a total of five percent (5%) of the Maximum Contract Amount is reached. Such amounts will be retained until thirty (30) days after the COUNTY has accepted the Deliverables pursuant to Section 16.0 (SYSTEM ACCEPTANCE TEST) below. In the event COUNTY rejects any Deliverables, deductions will be reinstated until such time as the total retention equals five percent (5%) of the Maximum Contract Amount. Upon Final Acceptance, CONTRACTOR shall submit an Invoice for release of retained amounts.

15.1.4 "CONTRACTOR shall maintain a system of record keeping that will allow CONTRACTOR to determine when it has incurred seventy-five percent (75%) of the total contract authorization under this Agreement. Upon occurrence of this event, CONTRACTOR shall send written notification to COUNTY."

15.2 Billing Adjustments

CONTRACTOR shall provide COUNTY's Project Manager with a monthly summary of credits and invoice adjustments. The summary shall include, but not be limited to, the number and types of adjustments identified, the number of adjustments resolved, and the number and types of adjustments that are outstanding. CONTRACTOR shall insure that all adjustments and credits, including associated taxes, are distributed on the billing reports and the invoice.

15.3 Billing Disputes and Reports

CONTRACTOR shall resolve all billing disputes to the satisfaction of COUNTY within thirty (30) calendar days, or provide full credit to COUNTY and pursue resolution of the dispute as provided in Section 39.0 (DISPUTE RESOLUTION PROCEDURE).

15.4 Data Retention

All data, hard copy, letters, memoranda, credits, and adjustment data pertaining to the billing for Services and System Components shall be retained by CONTRACTOR for at least three (3) years. When COUNTY requires access to such data, CONTRACTOR shall make available, at no cost to COUNTY, the computer processing, software, procedures, and other tools required to read and process retained data and deliver it to COUNTY within thirty (30) days.

SYSTEM ACCEPTANCE TESTS

16.1 CONTRACTOR's Functional Performance Test

CONTRACTOR shall conduct a Functional Performance Test in accordance with the approved System Acceptance Test Plan. The Functional Performance Test shall verify that the software and hardware delivered actually executes all processing functions currently performed by the existing System.

CONTRACTOR shall give COUNTY at least ten (10) days notice of the scheduled Functional Performance Test prior to commencement. A designated COUNTY representative may observe and verify the results related to the Functional Performance Test. Upon satisfactory completion of the Functional Performance Test, CONTRACTOR shall prepare and submit to COUNTY, a Final Functional Performance Test Report which shall include a record of all failures and corrective action taken as described in Exhibit A (Statement of Work), Subtask 10.1.

16.2 COUNTY's Functional Performance Test

Upon completion of CONTRACTOR's Functional Performance Test, COUNTY shall conduct COUNTY'S Functional Performance Test, which shall include, without limitation, the following tests:

- A.) "Initial Component Testing" to determine whether each System Component of the System has been properly installed and is operating in accordance with applicable System Specifications;
- B.) "Integrated Component Test" to determine whether each System Component of the System interfaces and integrates with other System Components of the System already installed, and whether each such System Component operates in the approved operating configuration and in accordance with applicable System Specifications;
- C.) "Final Integrated Component Test" to test the same functionality as the Integrated Component Test using actual data from the Sheriff's Department.

16.3 System Reliability Test

Upon completion of the Functional Performance Test, CONTRACTOR shall conduct a System Reliability Test over a thirty (30) day period to demonstrate the reliability of the system. The conduct of the System Reliability Test shall be monitored by COUNTY staff. The System Reliability Test shall be conducted to verify that the system will remain operational at an Effectiveness Level of at least

ninety-eight percent (98%). Upon completion of the System Reliability Test, CONTRACTOR shall prepare and present a Final System Reliability Report

which documents all failures and any corrective action taken as described in

Subtask 10.2.

16.4 Failed System Reliability Testing

If COUNTY makes a good faith determination that the System as a whole, or a System Component has not successfully completed the System Reliability Test as defined in Subsection 16.3 above, COUNTY shall promptly notify CONTRACTOR in writing of such failure (hereinafter "Notice of Failure"), specifying with as much detail as possible the manner in which the System Component or System failed to pass the applicable System Reliability Test. CONTRACTOR shall immediately commence all reasonable efforts to complete, as quickly as possible, such necessary corrections, repairs, and modifications to the System Component or the System as will permit the System Component and the System to be ready for retesting. CONTRACTOR shall notify COUNTY when such corrections have been completed, and the System Reliability Test shall begin again. If, after COUNTY completes the applicable System Reliability Test for a third time, it makes a good faith determination that the System Component or System again fails to pass the applicable System Reliability Test, COUNTY shall promptly notify CONTRACTOR in writing, specifying in the notice COUNTY's election either to (1) afford CONTRACTOR the opportunity to repeat the correction and modification process as set forth above; or (2) depending on the nature and extent of the failure, and the parts of the System Component or System affected, in COUNTY's sole judgment, terminate this Agreement in accordance with Section 35.0 (TERMINATION FOR DEFAULT) as a non-curable default with respect to (i) one or more particular System Component(s) that is (are) not performing as required herein; or (ii) if the failure materially affects the function or desirability of the System to COUNTY as a whole, the entire System as identified in Exhibit A (Statement of Work). The foregoing correct and modified procedure shall be repeated until the System Component or System, based on COUNTY's good faith determination, passes the applicable System Reliability Test, or COUNTY elects one of the termination options described below. In the event of a termination under this Section, CONTRACTOR shall pay to COUNTY, within ten (10) business days of written notice of termination (1) all sums paid to CONTRACTOR by COUNTY under this Agreement for the System Component as to which the termination applies, or for the entire System if the entire Agreement is terminated; and (2) the sum equal to all of the out-of-pocket expenses incurred by COUNTY in connection with such failed System Component or System, including, but not limited to, COUNTY labor and outside consulting costs. If the termination applies only to a System Component, at COUNTY's option, any reimbursement due to it may be credited against other sums due and payable by COUNTY to CONTRACTOR under this Agreement.

16.5 Certification of Completion:

After COUNTY has determined that the System has passed the System Reliability Test, COUNTY shall issue a written certificate of completion, which shall not be withheld unreasonably.

17.0 DOCUMENTATION

At no additional charge to COUNTY, CONTRACTOR shall provide COUNTY with all Documentation relating to the System in the method, number, and format as reasonably requested by COUNTY as it relates to Exhibit A (Statement of Work”), including, to the maximum extent possible, electronic delivery. If the Documentation for the System or any System Component is revised or supplemented at any time, CONTRACTOR shall deliver a copy of such revised or supplemental Documentation to COUNTY within ten (10) days of its general availability, at no cost to COUNTY. COUNTY may, at any time, reproduce copies of all Documentation and other materials provided by CONTRACTOR, distribute such copies to its Users, and incorporate such copies into its own technical manuals, provided that such reproduction relates to COUNTY’s use of the System or any System Component(s), and copyright notices, if any, are reproduced thereon.

18.0 CONTRACTOR’S REPRESENTATIONS, WARRANTIES, AND COVENANTS

18.1 CONTRACTOR warrants and represents that it is a corporation duly organized, validly existing, and in good standing under the laws of its jurisdiction of formation, and has full power and authority to own and operate its business and properties and to carry on its business in all jurisdictions in which the transaction of its business makes such qualification necessary.

18.2 CONTRACTOR warrants that it has full power and authority to grant the rights granted by this Agreement to COUNTY, that no consent of any other person or entity is required by CONTRACTOR to grant such rights other than consents that have been obtained and are in effect, and that neither the performance of this Agreement by CONTRACTOR, nor the license to and use by, COUNTY and its Users of the System will in any way violate any agreement, nor constitute an infringement or other violation of any copyright, trade secret, trademark, service mark, patent, invention, proprietary information, or other rights of any third party.

18.3 CONTRACTOR warrants and represents that: (i) all Services shall be performed in a professional and workmanlike manner, with all necessary care, skill, and diligence, and in accordance with the Specifications and other requirements set forth herein; (ii) all System Components shall conform to the Specifications; and (iii) all Services and System Components shall be free of defects in design, material, and workmanship and shall be suitable for the purposes of this Agreement as identified under Exhibit A (Statement of Work).

18.4 CONTRACTOR represents, warrants, and agrees that the System Components are capable of interconnecting and/or interfacing with each other

and COUNTY's Existing Systems and that the System Components and

pable of delivering the functionality needed by COUNTY to meet its information systems requirements as set forth in the Specifications (including, without limitation, the Recitals and Statement of Work).

18.5 CONTRACTOR represents, warrants, and agrees that there are no existing or threatened legal proceedings against CONTRACTOR that would have an adverse affect upon its ability to perform its obligations under this Agreement or its financial condition or operations.

18.6 CONTRACTOR represents, warrants, and agrees that CONTRACTOR will not knowingly cause any unplanned interruption of the operations of, or accessibility to the Services or any System Component through any device, method, or means including, without limitation, the use of any "virus," "lockup," "time bomb," or "key lock" device or program, or disabling code which has the potential or capability of causing any unplanned interruption of the operations of, or accessibility of the Services or System to COUNTY, or which could alter, destroy, or inhibit the use of the Services or System, or the data contained therein (collectively referred to for purposes of this Section as "Disabling Device(s)") which could block access to or prevent the use of the Services or Equipment by COUNTY. CONTRACTOR represents, warrants, and agrees that it has not purposely placed, nor is it aware of, any Disabling Device on any Service or System Component provided to COUNTY under this Agreement, nor shall CONTRACTOR knowingly permit any subsequently delivered Service or System Component to contain any Disabling Device.

18.7 CONTRACTOR represents and warrants that the Licensed Software will accurately determine chronological dates and accurately perform all calculations, data manipulations, sorting, and transmission of data regardless of whether the data represents or references different centuries. Without limiting the foregoing, the Licensed Software will (i) respond to two-digit year date input in a way that resolves the ambiguity as to the century in a disclosed, defined, and pre-determined manner. Interfacing software must make the same century assumptions when processing two-digit years; (ii) correctly process any date with a year specified as "99" and "00" regardless of other subjective meanings of these attached values; and (iii) correctly handle date fields containing non-date information and correctly handle a date held in a non-date field.

18.8 If CONTRACTOR assigned to this Agreement, is acquired, or is otherwise controlled by another individual or entity (collectively referred to as a "Successor Event") and subsequent to the Successor Event, the Licensed Software, or any System Component are not supported to at least the same level that CONTRACTOR supported the Licensed Software and System Component because, for example, CONTRACTOR's assignee chooses to support other products with similar functions, COUNTY, at its sole option, may elect to transfer the license, without cost or penalty, to another similar product ("Replacement Product") within CONTRACTOR's assignee's or successor's

product offering. The assignee or successor, by taking benefit (including acceptance of any payment under this Agreement) ratifies this Agreement. All terms and conditions of this Agreement shall continue in full force and effect for the Replacement Product. In addition, the following terms and conditions shall apply if COUNTY elects to transfer this License to a Replacement Product:

- D. Any and all items of Licensed Software or System Component offered separately, and needed to match the original level of functionality, shall be supplied by CONTRACTOR's assignee or successor without additional cost or penalty;
 - A. COUNTY shall receive reasonable training for its employees and agents, for purposes of learning to use the Replacement Product. Training shall be provided at no cost to COUNTY;
 - B. All license terms and conditions shall remain as granted herein with no additional fees imposed on COUNTY; and
 - C. The definition of Licensed Software and System Component shall then mean or include the Replacement Product.

For purposes of this Section, the term "controlled" shall mean the legal right to elect a majority of the directors of a corporation or similar officers of any other entity, or to determine an entity's general management policies through contract or otherwise.

- 18.9 CONTRACTOR further represents, warrants, covenants, and agrees that COUNTY shall be entitled to use the System and Services without disturbance, subject only to COUNTY's obligation to make the required payments under this Agreement. CONTRACTOR represents and warrants that this Agreement is neither subject nor subordinate to any right or claim of any third party, including, without limitation CONTRACTOR's creditors. Further, CONTRACTOR represents and warrants that during the term of this Agreement it will not subordinate this Agreement or any of its rights hereunder to any third party without the prior written consent of COUNTY, and without providing in such subordination for non-disturbance of COUNTY's use of the System or Services in accordance with this Agreement.
- 18.10 In the event CONTRACTOR fails to perform its obligations set forth in this Section 18.0 in a timely manner, then COUNTY may, after written notice to CONTRACTOR and in the event CONTRACTOR, after a reasonable time has still failed to perform such warranty obligations, perform any required correction, replacement, or other work and debit CONTRACTOR therefor at

COUNTY's direct actual cost of outside labor and materials and COUNTY's burdened (including salary, employee benefits, and reimbursement policies) rates for labor. Such debit shall be made against any amounts owed by COUNTY to

CONTRACTOR under this Agreement. In the event CONTRACTOR does not agree with COUNTY's assessment of charges, CONTRACTOR may seek to resolve any such dispute pursuant to Section 39.0 (DISPUTE RESOLUTION PROCEDURE).

- 18.11 CONTRACTOR represents, warrants, and covenants that the Services and System shall strictly comply with the tasks and deliverables of Exhibit A (Statement of Work). The process for monitoring compliance with the tasks and deliverables and credits for non-compliance are set forth in Exhibit B (Rates and Fees). CONTRACTOR acknowledges and agrees that the remedy and credits to be assessed pursuant to this Subsection 18.11 shall be payable to COUNTY upon demand and may, at COUNTY's option, be set off against any monies due to CONTRACTOR under this Agreement and are reasonable under the circumstances existing as of the date this Agreement is entered into.
- 18.12 CONTRACTOR warrants and represents that its activities hereunder shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, guidelines, and directives and all provisions required thereby to be included in this Agreement are hereby incorporated herein by reference. CONTRACTOR shall have no more than 30 days to correct any non-compliance with COUNTY rules, regulations, ordinances, guidelines, and directives following written notice of non-compliance from COUNTY or any regulating authority.
- 18.13 CONTRACTOR warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others, and that all its employees performing work under this Agreement meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. CONTRACTOR shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal statutes and regulations as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for the period prescribed by law.
- 18.14 CONTRACTOR warrants that it has, and shall maintain in effect during the Term, all licenses, permits, registrations, accreditations, and certificates required by all Federal, State, and local laws, ordinances, rules, regulations, guidelines, and directives which are applicable to COUNTY facilities, the System, and Services under this Agreement. CONTRACTOR shall further ensure that all of its officers, employees, agents, and Subcontractors who perform Services hereunder, shall obtain and maintain in effect during the Term all licenses, permits, regulations, accreditations, and certificates which are applicable to their performance hereunder. A copy of each such license,

permit, registration, accreditation, and certificate required by all applicable Federal, State, and local laws, ordinances, rules, regulations, guidelines, and directives shall be provided, in duplicate, to COUNTY's Project Director.

- 18.15 It is understood and agreed by the parties that CONTRACTOR's representations and warranties are set forth throughout this Agreement and are not confined to this Section 18.0.
- 18.16 CONTRACTOR shall assign to COUNTY to the fullest extent permitted by law or by agreement, and shall otherwise ensure that the benefits of any applicable warranty or indemnity offered by any manufacturer of any of hardware, software, or any other product or service provided hereunder shall fully extend to and be enjoyed by COUNTY at no additional charge.

19.0 PROHIBITION AGAINST ASSIGNMENT AND DELEGATION

CONTRACTOR shall not assign its rights or delegate its duties under this Agreement, whether in whole or in part, without the consent of COUNTY in its sole and absolute discretion, and any attempted assignment or delegation without such consent shall be null and void and deemed a material breach of this Agreement, upon which the COUNTY, in its sole discretion, may immediately terminate for default.

20.0 WARRANTY AGAINST CONTINGENT FEES

- 20.1 CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONTRACTOR for the purpose of securing business.
- 20.2 For breach of the warranty in Subsection 20.1, COUNTY shall have the right to terminate this Agreement, and in its sole and absolute discretion, deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

21.0 INDEPENDENT CONTRACTOR STATUS

- 21.1 This Agreement is by and between CONTRACTOR and COUNTY and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association as between CONTRACTOR and COUNTY. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever. CONTRACTOR shall function as, and in all aspects is, an independent contractor.
- 21.2 CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement all compensation and benefits. COUNTY shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits,

Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of CONTRACTOR.

- 21.3 CONTRACTOR understands and agrees that all persons performing work pursuant to this Agreement are, for all purposes, and in particular for purposes of workers' compensation liability, the sole employees of CONTRACTOR and not employees of COUNTY. CONTRACTOR shall be solely liable and responsible for furnishing any and all workers' compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of CONTRACTOR pursuant to this Agreement.
- 21.4 COUNTY may require, in its sole discretion, that certain or all of CONTRACTOR's employees execute a CONTRACTOR Employee Acknowledgment and Confidentiality Agreement (Exhibit C). CONTRACTOR shall deliver executed copies of any such agreements to COUNTY's Project Director, on or after the execution of this Agreement by the COUNTY's Board of Supervisors, but in no event later than the date any such employee first performs work under this Agreement.

22.0 SUBCONTRACTING

- 22.1 COUNTY has relied, in entering into this Agreement, on the reputation of and on obtaining the personal performance of CONTRACTOR itself. Consequently, no performance of this Agreement, or any portion thereof, shall be subcontracted by CONTRACTOR without the prior written consent of COUNTY as provided in this Section 22.0. Any attempt by CONTRACTOR to subcontract any performance, obligation, or responsibility under this Agreement, without the prior written consent of COUNTY, shall be null and void and shall constitute a material breach of this Agreement, upon which COUNTY may immediately terminate this Agreement.
- 22.2 If CONTRACTOR desires to subcontract any portion of its performance, obligations, or responsibilities under this Agreement, CONTRACTOR shall make a written request to COUNTY for written approval to enter into the particular subcontract. CONTRACTOR's request to COUNTY shall include:

D. The reason(s) for the particular subcontract.

- A. A detailed description of the work to be performed by the proposed Subcontractor.
- B. Identification of the proposed Subcontractor and an explanation of why and how the proposed Subcontractor was selected.
- C. A Certificate of Insurance from the proposed Subcontractor which establishes that the Subcontractor maintains all the programs of insurance required by COUNTY.

D. Any other information and/or certification requested by COUNTY.

- 22.3 COUNTY will review CONTRACTOR's request to subcontract and determine, in its sole and absolute discretion, whether or not to consent to such request on a case-by-case basis.
- 22.4 CONTRACTOR shall indemnify, defend, and hold harmless COUNTY, its officers, employees, and agents from and against any and all liability, including, but not limited to, claims, demands, liabilities, damages, costs, and expenses, including, but not limited to, defense costs and legal, accounting, or other expert consulting or professional fees, in any way arising from or related to CONTRACTOR's use of any Subcontractor, including any officers, employees, or agents of any Subcontractor, in the same manner as required for CONTRACTOR, its officers, employees, and agents under this Agreement.
- 22.5 Notwithstanding any COUNTY consent to any subcontracting, CONTRACTOR shall remain responsible for any and all performance required of it under this Agreement, including, but not limited to, the obligation to properly supervise, coordinate, and perform all work required hereunder, and no subcontract shall bind or purport to bind COUNTY. Further, COUNTY approval of any subcontract shall not be construed to limit in any way CONTRACTOR's performance, obligations, or responsibilities to COUNTY, nor shall such approval limit in any way any of COUNTY's rights or remedies contained in this Agreement.
- Additionally, COUNTY approval of any subcontract shall not be construed in any way to constitute the determination of the authorization or appropriateness of any cost or payment under this Agreement.
- 22.6 In the event that COUNTY consents to any subcontracting, such consent shall be subject to COUNTY's right to give prior and continuing approval of any and all Subcontractor personnel providing services under such subcontract. CONTRACTOR shall assure that any Subcontractor personnel not approved in writing by COUNTY shall be immediately removed from the provision of any services under the particular subcontract, or that other action is taken as requested by COUNTY. Further, in the event that COUNTY consents to any subcontracting, such consent shall be subject to COUNTY's right to terminate, in whole or in part, any subcontract at any time upon written notice to CONTRACTOR when such action is deemed by COUNTY to be in its best interest. COUNTY shall not be liable or responsible in any way to CONTRACTOR, to any Subcontractor, or to any officers, employees, or agents of CONTRACTOR or Subcontractor, for any claims, demands, damages, liabilities, losses, costs, or expenses, including, but not limited to, defense costs and legal, accounting and other expert, consulting or professional fees, in any way arising from or related to COUNTY's exercise of such rights.
- 22.7 In the event that COUNTY consents to any subcontracting, such consent shall be subject to COUNTY's ongoing approval rights with regard to

CONTRACTOR's staff as set forth in Subsection 7.3 (Approval of CONTRACTOR's Staff). COUNTY shall not be liable or responsible in any way to CONTRACTOR, to any Subcontractor, or to any officers, employees, or agents of CONTRACTOR or Subcontractor, for any liability, damages, costs, or expenses arising from or related to COUNTY's exercise of such rights.

- 22.8 In the event that COUNTY consents to any subcontracting, the Subcontractor, on behalf of itself, its successors, and administrators shall assume and be bound by and shall be deemed to have assumed and agreed to be bound by each and all of the provisions of this Agreement and any Amendment hereto, provided that
COUNTY's Project Director shall have the right to waive the requirement that a particular Subcontractor assume and be bound by specified provisions of this Agreement and any Amendment hereto.
- 22.9 In the event that COUNTY consents to any subcontracting, such consent shall apply to each particular subcontract only and shall not be, or be construed to be, a waiver of this Section 22.0 or a blanket consent to any further subcontracting.
- 22.10 The COUNTY's Project Director is hereby authorized to act for and on behalf of COUNTY pursuant to this Section 22.0, including, but not limited to, consenting to any subcontracting.
- 22.11 CONTRACTOR shall be solely liable and responsible for any and all payments and other compensation to all Subcontractors and their officers, employees, and agents. COUNTY shall have no liability or responsibility whatsoever for any payment or other compensation for any Subcontractors or their officers, employees, or agents.
- 22.12 CONTRACTOR shall deliver to COUNTY's Project Director a fully executed copy of each subcontract entered into by CONTRACTOR pursuant to this Section 22.0, on or immediately after the effective date of the subcontract, but in no event later than the date any work is performed under the subcontract.

22.13 In the event that COUNTY consents to any subcontracting, CONTRACTOR shall obtain an executed Subcontractor Employee Acknowledgment and

Confidentiality Agreement for each of Subcontractor's employees performing

ents shall be delivered to COUNTY's Project Director on or immediately after the effective date of the particular subcontract, but in not event later than the date any such employee performs work under the subcontract.

23.0 INDEMNIFICATION AND INSURANCE REQUIREMENTS

23.1 Indemnification

CONTRACTOR shall indemnify, defend, and hold harmless COUNTY and its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to any demands, claims, actions, fees, costs, damages, and expenses (including attorney and expert witness fees), arising from or connected with CONTRACTOR's negligent acts and/or omissions arising from and/or relating to this Agreement.

23.2 General Insurance Requirements

Without limiting CONTRACTOR's indemnification of COUNTY and during the term of this Agreement, CONTRACTOR shall provide and maintain, and shall require all of its subcontractors to maintain, the following programs of insurance specified in this Agreement. Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by the COUNTY, and such coverage shall be provided and maintained at CONTRACTOR's own expense.

23.2a Evidence of Insurance

Certificate(s) or other evidence of coverage satisfactory to COUNTY shall be delivered to Los Angeles Sheriff's Department, 4700 Ramona Boulevard, Monterey Park, California 91754-2169, Attention: Mr. Joe Cruz, Contracts Manager, Contract Administration Unit, Room 324, prior to commencing services under this Agreement. Such certificates or other evidence shall:

- A. Specifically identify this Agreement.
- B. Clearly evidence all coverages required in this Agreement.
- C. Contain the express condition that COUNTY is to be given written notice by registered mail at least thirty (30) days in advance of cancellation for all policies evidenced on the certificate of insurance.

- D. Include copies of the additional insured endorsement to the commercial general liability policy, adding the County of Los

Angeles, its Special Districts, its officials, officers and employees as

- E. Identify any deductibles or self-insured retentions for COUNTY's approval. The COUNTY retains the right to require CONTRACTOR to reduce or eliminate such deductibles or self-insured retentions as they apply to COUNTY, or, require CONTRACTOR to provide a bond guaranteeing payment of all such retained losses and related costs, including, but not limited to, expenses or fees, or both, related to investigations, claims administrations, and legal defense. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

23.2b Insurer Financial Ratings

Insurance is to be provided by an insurance company acceptable to the COUNTY with an A.M. Best rating of not less than A:VII, unless otherwise approved by COUNTY.

23.2c Failure to Maintain Coverage

Failure by CONTRACTOR to maintain the required insurance, or to provide evidence of insurance coverage acceptable to COUNTY, shall constitute a material breach of the contract upon which COUNTY may immediately terminate or suspend this Agreement. Alternatively, COUNTY may purchase such required insurance coverage, and without further notice to CONTRACTOR, COUNTY may deduct from sums due to CONTRACTOR any premium costs advanced by COUNTY for such insurance.

23.2d Notification of Incidents, Claims or Suits

CONTRACTOR shall report to COUNTY:

- A. Any accident or incident relating to Services performed under this Agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against CONTRACTOR and/or COUNTY. Such report shall be made in writing within twenty-four (24) hours of occurrence.
- B. Any third party claim or lawsuit filed against CONTRACTOR arising from related services performed by CONTRACTOR under this Agreement.

- C. Any injury to a CONTRACTOR's employee which occurs on COUNTY property. This report shall be submitted on a County "Non-employee Injury Report" to the COUNTY's Contract Manager.
- D. Any loss, disappearance, destruction, misuse, or theft of any kind whatsoever of COUNTY property, monies or securities entrusted to CONTRACTOR under the terms of this Agreement.

23.2e Compensation for COUNTY Costs

In the event that CONTRACTOR fails to comply with any of the indemnification or insurance requirements of this Agreement, and such failure to comply results in any costs to COUNTY, CONTRACTOR shall pay full compensation for all costs incurred by COUNTY.

23.2f Insurance Coverage Requirements for Subcontractors

CONTRACTOR shall ensure any and all subcontractors performing services under this Agreement meet the insurance requirements of this Agreement by either:

- A. CONTRACTOR providing evidence of insurance covering the activities of subcontractors, or
- B. CONTRACTOR providing evidence submitted by subcontractors evidencing that subcontractors maintain the required insurance coverage. COUNTY retains the right to obtain copies of evidence of subcontractor insurance coverage at any time.

24.0 INSURANCE COVERAGE REQUIREMENTS

A. General Liability insurance (written on ISO policy form CG 00 01 or its equivalent) with limits of not less than the following:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$1 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million

- E. Automobile Liability insurance (written on ISO policy form CA 00 01 or its equivalent) with a limit of liability of not less than \$1 million for each accident. Such insurance shall include coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto."
- A. Worker's Compensation and Employers Liability insurance providing worker's compensation benefits, as required by the Labor Code of the

State of California or by any other state, and for which CONTRACTOR is responsible. The insurance also shall include Employers' Liability coverage with limits of not less than the following:

Each Accident	\$1 million
Disease - policy limit	\$1 million
Disease - each employee	\$1 million

- B. Professional Liability insurance covering liability arising from any error, omission, negligent or wrongful act of the CONTRACTOR, its officers or employees with limits of not less than \$1 million per occurrence and \$3 million aggregate. Such insurance shall include coverage for copyright, trademark and patent infringement, and shall provide an extended two year reporting period commencing upon termination or cancellation of this Agreement.

25.0 DELIVERY AND RISK OF LOSS

CONTRACTOR shall bear the full risk of loss due to total or partial destruction of any and all Equipment, System Components, and Licensed Software provided pursuant to this Agreement until such items are delivered to and accepted by COUNTY pursuant to Section 16.0 (SYSTEM ACCEPTANCE TESTS) above, except for damage attributable to acts of COUNTY, its agents, employees and any other contractors or vendors of the COUNTY.

26.0 DAMAGE TO COUNTY FACILITIES, BUILDINGS, OR GROUNDS

- 26.1 CONTRACTOR shall repair, or cause to be repaired, at its own cost, any and all damages to COUNTY facilities, buildings, or grounds caused by CONTRACTOR, Subcontractors, or agents of CONTRACTOR. Such repairs shall be made immediately after CONTRACTOR has become aware of such damage, but in no event later than thirty (30) days after the occurrence.
- 26.2 If CONTRACTOR fails to make timely repairs, COUNTY may make any necessary repairs. All costs incurred by COUNTY, as determined by COUNTY, for such repairs shall be repaid by CONTRACTOR by cash payment upon demand, or without limitation of all COUNTY's other rights and remedies provided by law or under this Agreement. COUNTY may deduct such costs from any amounts due to CONTRACTOR from COUNTY under this Agreement.

27.0 RECORDS AND AUDITS

- 27.1 CONTRACTOR shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. CONTRACTOR shall also maintain accurate and complete employment and other records relating to its performance of this Agreement. CONTRACTOR agrees that COUNTY, or its authorized representatives, shall have access to, and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or records relating to this Agreement, provided such access rights do not constitute an unlawful invasion of the privacy rights of any CONTRACTOR employee. All such material, including, but not limited to, all financial records, time cards, and other employment records and proprietary data and information shall be kept and maintained by CONTRACTOR, and shall be made available to COUNTY during the Term and for a period of five (5) years thereafter unless COUNTY's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by CONTRACTOR at a location in either Los Angeles County or Orange County.
- 27.2 In the event that an audit is conducted of CONTRACTOR specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by CONTRACTOR or otherwise specifically regarding this Agreement, then CONTRACTOR shall file a copy of such audit report with COUNTY's Auditor-Controller and COUNTY's Project Director within thirty (30) days of CONTRACTOR's receipt thereof, unless otherwise provided by applicable Federal or State law, or under this Agreement.
- 27.3 If, at any time during or after the Term, representatives of COUNTY conduct an audit of CONTRACTOR regarding the work performed or goods provided under this Agreement, and if such audit finds that COUNTY's dollar liability for any such work or goods is less than payments made by COUNTY to CONTRACTOR, then the difference, together with COUNTY's reasonable costs of audit, shall be either repaid by CONTRACTOR to COUNTY by cash payment upon demand, or at the sole option of Director, deducted from any amounts due to CONTRACTOR from COUNTY, whether under this Agreement or otherwise. If such audit finds that COUNTY's dollar liability for such work is more than the payments made by COUNTY to CONTRACTOR, then the difference shall be paid to CONTRACTOR by COUNTY.
- 27.4 Failure on the part of CONTRACTOR to comply with any provisions of this Section 27.0 shall constitute a material breach of this Agreement upon which COUNTY may immediately terminate this Agreement.

28.0 PUBLICITY

CONTRACTOR shall not disclose any details in connection with this Agreement to any person or entity except as may be otherwise provided herein or required by law. However, in recognizing CONTRACTOR's need to identify its services and related clients to sustain itself, COUNTY shall not inhibit CONTRACTOR from publishing its role under this Agreement, with the following conditions:

- A. CONTRACTOR shall develop all publicity material in a professional manner.
- B. During the term of this Agreement, CONTRACTOR shall not, nor authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of COUNTY without the prior written consent of COUNTY's Project Director. COUNTY shall not unreasonably withhold written consent, and approval by COUNTY may be assumed in the event no adverse comments are received in writing within two weeks after submittal of written request for such consent.
- C. CONTRACTOR may, without the prior written consent of COUNTY, indicate in its proposals and sales materials that it has been awarded this Agreement with the County of Los Angeles, provided that the requirements of this Section 28.0 shall apply.

29.0 PATENT, COPYRIGHT, AND TRADE SECRET INDEMNIFICATION

- 29.1 CONTRACTOR shall indemnify, defend, and hold harmless COUNTY from and against any and all liability, including, but not limited to, any demand, claim, action, proceeding, damage, fee, cost, and/or expense, including, but not limited to, defense costs and attorneys' fees, for or by reason of any actual or alleged infringement of any third party's patent or copyright, or any actual or alleged unauthorized trade secret disclosure, arising from or related to the operation and utilization of CONTRACTOR's work under this Agreement. COUNTY shall inform CONTRACTOR as soon as practicable of any claim or action alleging such infringement or unauthorized disclosure, and shall support CONTRACTOR's defense and settlement thereof.
- 29.2 In the event any equipment, part thereof, or software product becomes the subject of any complaint, claim, or proceeding alleging infringement or unauthorized disclosure, such that COUNTY's continued use of such item is formally restrained, enjoined, or subjected to a risk of damages, CONTRACTOR, at its sole expense, and providing that COUNTY's continued use of the system is not materially impeded, shall either:

A. Procure for COUNTY all rights to continued use of the questioned equipment, part, or software product; or

B. Replace the questioned equipment, part, or software product with a non-questioned item; or

3. Modify the questioned equipment, part, or software so that it is free of claims.

29.3 CONTRACTOR shall have no liability if the alleged infringement or unauthorized disclosure is based solely upon a use of the questioned product, either alone or in combination with other items not supplied by CONTRACTOR, in a manner for which the questioned product was not designed nor intended.

30.0 WARRANTIES

30.1 Except as contained in this Agreement, there are no express or implied warranties, including but not limited to, the implied warranted of merchantability and fitness for a particular purpose.

30.2 CONTRACTOR warrants it shall promptly correct any and all defects, errors, or omissions in the tasks, deliverables, services, and other work provided pursuant to this Agreement. The correction of all such defects, errors, or omissions shall be at no cost to COUNTY.

30.3 CONTRACTOR further warrants that:

B. CONTRACTOR shall strictly comply with the specifications, requirements, standards, and representations set forth in this Agreement;

B. All tasks, deliverables, services, and other work shall be provided and/or performed in a timely and professional manner by qualified personnel. Time is of the essence for CONTRACTOR's performance under this Agreement;

I. All tasks, deliverables, services, and other work shall be complete, uniform in appearance, and in accordance with generally applicable standards in the industry; and

A. All hardware/software components that may be provided under this Agreement for maintenance services shall be performed according to the requirements set forth in the Statement of Work and in the documentation produced pursuant thereto and shall be Year 2000 compliant.

30.4 CONTRACTOR further warrants that all materials, documentation, software, equipment, and or workmanship provided by CONTRACTOR shall be warranted for a period of ninety (90) days following successful completion of the System Reliability Test and final acceptance of the modified System by COUNTY. During the warranty period, CONTRACTOR shall provide maintenance and repair services, including equipment replacement, at no cost to the COUNTY. **CONTRACTOR shall respond on a 9:00 a.m. to 5:00 p.m. next business day schedule, Monday through Friday unless service period is on a COUNTY observed Holiday, in which case a response for services shall be made on the next Business Day for that equipment designated as being covered under the 8 hours per day.**

30.5 The warranties in this Section 30.0 are personal to County and may not be transferred. These warranties are contingent upon County's proper use of the System. The warranties shall not include repair or replacement due to defects or failures through no fault of Contractor resulting (1) from accident, neglect, or misuse, (2) from failure or defect of electrical power, external electrical circuitry, air conditioning or humidity control, (3) from the use of items not provided by Contractor, or (4) from any party other than Contractor modifying, adjusting, repairing, or servicing the Equipment without Contractor's authorization.

31.0 COMPLIANCE WITH APPLICABLE LAW

31.1 CONTRACTOR shall comply with all applicable Federal, State, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included in this Agreement are hereby incorporated herein by reference.

31.2 CONTRACTOR shall indemnify, defend, and hold harmless COUNTY from and against any and all liability, including, but not limited to, any damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees, arising from or related to any violation on the part of CONTRACTOR, its employees, agents, or subcontractors of any such laws, rules, regulations, and ordinances.

32.0 DISCLOSURE OF INFORMATION

32.1 CONTRACTOR shall not disclose any terms or conditions of, or any circumstances or events which occur during the performance of, this Agreement to any person or entity except as may be otherwise provided herein or required by law. In the event CONTRACTOR receives any court or administrative agency order, service of process, or request by any person or entity (other than CONTRACTOR's professionals) for disclosure of any such details, CONTRACTOR shall immediately notify COUNTY's Project Director. Thereafter, CONTRACTOR shall comply with such order, process, or request only to the extent required by applicable law. Notwithstanding the preceding sentence, to the extent permitted by law, CONTRACTOR shall delay such compliance and cooperate with

COUNTY to obtain relief from such obligations to disclose until COUNTY shall have been given a reasonable opportunity to obtain such relief.

32.2 In recognizing CONTRACTOR's desire to identify its services and related clients, COUNTY shall not inhibit CONTRACTOR from publishing its role under this Agreement within the following conditions:

- A. During the Term, CONTRACTOR shall not publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of COUNTY without prior written consent of COUNTY's Project Director.
- B. CONTRACTOR may, without prior written consent of COUNTY, indicate in its proposals and sales materials that it has been awarded this Agreement with the COUNTY of Los Angeles, provided that the requirements of this Section 32.0 shall apply, and provided further that CONTRACTOR shall develop all publicity material in a professional manner.

32.3 Notwithstanding any other provision of this Agreement, either party may disclose information about the other which (i) is lawfully in the public domain at the time of disclosure; (ii) is disclosed with the prior written approval of the party to which such information pertains; or (iii) is required by law to be disclosed.

33.0 PROPRIETARY CONSIDERATIONS

33.1 For purposes hereof, COUNTY's "Confidential Information" means any data or information, oral or written, whether marked as confidential or proprietary or not, that relates to COUNTY's past, present, or future research, activities, opportunities, developments, inventions, designs, processes, plans, technical infrastructure, financial information and cost structure, customer and supplier lists, Sheriff data, fingerprint identification data, forecasts, and projections. Confidential Information will not be deemed to include information that (a) is publicly available or in the public domain at the time disclosed; (b) is or becomes publicly available or enters the public domain through no fault or direct or indirect actions of CONTRACTOR; or (c) is already in CONTRACTOR's possession free of any confidentiality obligations with respect thereto at the time of disclosure; or (d) is approved for release or disclosure by COUNTY without restriction.

33.2 CONTRACTOR shall ensure, during the Term and perpetually thereafter, that Confidential Information will be protected from disclosure to anyone other than the employees of CONTRACTOR and

Subcontractors who need to have access to such information to perform obligations and authorized activities under this Agreement.

CONTRACTOR represents and warrants that it currently has, and in the future will maintain in effect and enforce, rules and policies to protect against access to or use or disclosure of Confidential Information other than in accordance with this Agreement, including, without limitation, written instruction to and agreements with employees and agents to ensure that such employees and agents protect the confidentiality of Confidential Information in the form of an executed CONTRACTOR Employee Acknowledgment and Confidentiality Agreement (Exhibit C) for all employees performing work under this Agreement.

33.3 CONTRACTOR expressly will instruct its employees and agents not to disclose Confidential Information to third parties, including, without limitation, customers, Subcontractors, or consultants. CONTRACTOR, at its own expense, will take all steps, including, without limitation, the initiation and prosecution of actions at law or in equity, necessary or appropriate to prevent use or disclosure, and upon any unauthorized disclosure further unauthorized disclosure, or use of any Confidential Information received or obtained by it except as expressly permitted by the terms of this Agreement. CONTRACTOR will not make any use whatsoever at any time of COUNTY's Confidential Information except as expressly authorized in this Agreement, and CONTRACTOR will notify COUNTY immediately of any unauthorized disclosure or use, and will cooperate with COUNTY to protect all proprietary rights in and ownership of COUNTY's Confidential Information.

33.4 To the extent required by applicable law, or by lawful order or requirement of a court or governmental authority having competent jurisdiction over CONTRACTOR, CONTRACTOR may disclose Confidential Information, in accordance with such law or order or requirement, subject to the following conditions: As soon as possible after becoming aware of such law, order, or requirement and prior to disclosing Confidential Information, CONTRACTOR will provide COUNTY notice not less than five (5) business days prior to the required disclosure. CONTRACTOR will use reasonable efforts not to release Confidential Information, pending the outcome of any measures taken by the COUNTY to contest, otherwise oppose, or seek to limit such disclosure by CONTRACTOR and any subsequent disclosure or use of Confidential Information that may result from such disclosure. CONTRACTOR will cooperate with the COUNTY regarding such measures. Notwithstanding any such disclosure, CONTRACTOR will not affect its obligations hereunder with respect to Confidential Information so disclosed.

33.5 Without limiting any other warranty or obligation of CONTRACTOR under this Agreement, during the term of this Agreement,

and thereafter in perpetuity, CONTRACTOR will not gather, store, or use any COUNTY Confidential Information in any manner, and will not disclose, distribute, sell, share, rent, or otherwise transfer any COUNTY Confidential Information to any third party, except as expressly provided in this Agreement. CONTRACTOR represents, covenants, and warrants that CONTRACTOR will use COUNTY Confidential Information only in compliance with (i) this Agreement; (ii) COUNTY's reasonable privacy policies; and (iii) all applicable laws, policies, and regulations (including, but not limited to, applicable laws, policies, and regulations related to spamming, privacy, and consumer protection). CONTRACTOR hereby agrees to indemnify and hold harmless COUNTY and its affiliates from and against any and all damages, losses, liabilities, settlements, and expenses (including, without limitation, costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the warranty set forth in the previous sentence.

33.6 CONTRACTOR will maintain and enforce safety and physical security procedures with respect to its access and maintenance of COUNTY's Confidential Information that are (a) at least equal to industry standards for such types of locations; (b) in accordance with COUNTY's reasonable security requirements; and (c) which provide reasonably appropriate technical and organizational safeguards against accidental or unlawful destruction, loss, alteration, or unauthorized disclosure or access of COUNTY Confidential Information and all other data owned by COUNTY and accessible by CONTRACTOR under this Agreement. Without limiting the generality of the foregoing, CONTRACTOR will take all reasonable measures to secure and defend its location and equipment against "hackers" and others who may seek, without authorization, to modify or access CONTRACTOR systems or the information found therein without the consent of COUNTY. CONTRACTOR will periodically test its systems for potential areas where security could be breached. CONTRACTOR will report to COUNTY immediately any breaches of security or unauthorized access to CONTRACTOR's systems that CONTRACTOR detects or becomes aware of. CONTRACTOR will use diligent efforts to remedy such breach of security or unauthorized access in a timely manner.

33.7 All COUNTY Confidential Information must be stored in a physically and logically secure environment that protects it from unauthorized access, modification, theft, misuse, and destruction. In addition, the general standards set forth above, CONTRACTOR will maintain an adequate level of physical security controls over its facility, including, but not limited to, appropriate alarm systems, fire suppression, access controls (including off-hour controls) which may include visitor access procedures, security, guard force, video surveillance, and staff

egress searches. Further, CONTRACTOR will maintain an adequate level of data security controls, including, but not limited to, logical access controls, including user sign-in identification and authentication, data access controls (e.g., password protection of CONTRACTOR's applications, data files, and libraries), accountability tracking, anti-virus software, secured printers, restricted download to disk capability, and provision for system backup.

33.8 During the Term, COUNTY or its third party designee may, but is not obligated to, perform audits of CONTRACTOR's environment, including unannounced penetration and security tests, as it relates to the receipt, maintenance, use, or retention of COUNTY Confidential Information. Any of COUNTY's regulators shall have the same right upon request. CONTRACTOR agrees to comply with all reasonable recommendations that result from such inspections, tests, and audits within reasonable time frames.

33.9 CONTRACTOR shall not reproduce, distribute, or disclose to any person or entity any information identifying, characterizing, or relating to any risk, threat, vulnerability, weakness, or problem regarding data security in COUNTY's computer and/or fare collection system, or to any safeguard, countermeasure, or contingency plan, policy, or procedures for data security contemplated or implemented by COUNTY, without COUNTY's prior written consent. CONTRACTOR shall provide to COUNTY an executed CONTRACTOR Employee Acknowledgment and Confidentiality Agreement (Exhibit C) for each of its employees and subcontractors having access to COUNTY Confidential Information. Such Agreements shall be delivered to COUNTY's Project Director on or before the Effective Date, and thereafter, from time to time prior to any additional personnel having access to COUNTY materials, data, and information.

33.10 Any and all materials which are developed, or were originally acquired by CONTRACTOR outside the scope of this Agreement, which CONTRACTOR desires to use hereunder, and which CONTRACTOR considers to be proprietary or confidential, must be specifically identified by CONTRACTOR to COUNTY's Project Director as proprietary or confidential, and shall be plainly and prominently marked by CONTRACTOR as "PROPRIETARY" or "CONFIDENTIAL."

33.11 COUNTY agrees not to reproduce, distribute, or disclose to non-county entities (other than outside counsel or consultants subject to non-disclosure agreements) CONTRACTOR's proprietary and confidential material without the prior written permission of CONTRACTOR, or as required by law or pursuant to Section 39.0 (DISPUTE RESOLUTION PROCEDURE).

33.12 Notwithstanding any other provision of this Agreement, COUNTY shall not be obligated in any way under this Agreement for:

- A. Any of CONTRACTOR's proprietary and/or confidential materials not plainly and prominently marked with restrictive legends required pursuant to Subsection 33.10; or
- B. Any disclosure of any materials which COUNTY is required to make under the California Public Records Act, or as otherwise required by law, rule, or regulation.

TERMINATION FOR INSOLVENCY

34.1 COUNTY may terminate this Agreement immediately at any time following the occurrence of any of the following:

- B. CONTRACTOR shall be deemed to be insolvent if it has ceased to pay, or has admitted in writing its inability to pay, its debts for at least sixty (60) days in the ordinary course of business, or cannot pay its debts as they become due, whether or not a petition has been filed under the United States Bankruptcy Code and whether or not CONTRACTOR is insolvent within the meaning of the United States Bankruptcy Code, provided that CONTRACTOR shall not be deemed insolvent if it has ceased in the normal course of business to pay its debts which are disputed in good faith and which are not related to this Agreement.
- A. The filing of a voluntary or involuntary petition (which involuntary petition is not dismissed within sixty (60) days) regarding CONTRACTOR under the United States Bankruptcy Code.
- B. The appointment of a receiver or trustee for CONTRACTOR.
- C. The execution by CONTRACTOR of a general assignment for the benefit of creditors.

34.2 The rights and remedies of COUNTY provided in this Section 34.0 shall not be exclusive and are in addition to any other rights and remedies provided by law , at equity, and/or under this Agreement.

35.0 TERMINATION FOR DEFAULT

35.1 COUNTY may, by written notice to CONTRACTOR, terminate the whole or any part of this Agreement in any of the following circumstances:

- D. If CONTRACTOR fails to perform or provide any System Component or Service (i) within the times specified in this Agreement, including the applicable notice and/or cure periods, if any (if no cure period is specified in the Agreement, CONTRACTOR shall have twenty (20) days to cure prior to termination under this Subsection 35.1.A); or (ii) any authorized extensions thereof (provided that nothing in this Subsection 35.1.A) shall in any way limit or modify any rights of COUNTY or obligations of CONTRACTOR relating to timely performance by CONTRACTOR as otherwise set forth in this Agreement); or
- A. If CONTRACTOR fails to perform or comply with any of the other provisions of this Agreement, or so fails to make progress as to endanger

performance of this Agreement in accordance with its terms, and in either of these two circumstances, does not cure such failure within a period of twenty (20) days (or such longer period as COUNTY may authorize in writing) after receipt of written notice from COUNTY specifying such failure; provided; however, that (i) CONTRACTOR shall not be entitled to any cure period, and COUNTY may terminate immediately, in the event that CONTRACTOR's failure to perform or comply is not reasonably capable of being cured; and (ii) that the above cure periods shall in no way apply to the calculation of the credits to COUNTY. If, pursuant to the preceding sentence, COUNTY has terminated this Agreement without providing a cure period, and subsequently a final determination is made that the default was capable of being cured, then the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 38.0 (TERMINATION FOR CONVENIENCE).

35.2 In the event that COUNTY terminates this Agreement in whole or in part as provided in Section 34.0 (TERMINATION FOR INSOLVENCY), this Section 35.0, or Section 36.0 (TERMINATION FOR IMPROPER CONSIDERATION), then:

- A. COUNTY shall have the right to procure, upon such terms, and in such a manner as COUNTY may deem appropriate, goods, services, and other work similar to those so terminated, and CONTRACTOR shall be liable to COUNTY for any and all reasonable costs incurred by COUNTY to procure and furnish such similar goods, services, and other work;
 - B. CONTRACTOR and COUNTY shall continue the performance of this Agreement to the extent not terminated under the provisions of Section 34.0 (TERMINATION FOR INSOLVENCY), this Section 35.0, and/or Section 36.0 (TERMINATION FOR IMPROPER CONSIDERATION);
- A. CONTRACTOR understands and agrees that COUNTY has obligations that it cannot satisfy without use of the System and Services, and that a failure to satisfy such obligations could result in irreparable damage to COUNTY and the entities it serves. Therefore, CONTRACTOR agrees that in the event of any termination of this Agreement, as a result of the breach hereof by either party, or for any other reason, CONTRACTOR shall fully cooperate with COUNTY in the transition of COUNTY to a new provider of goods and services, toward the end that there be no interruption of day-

to-day operations due to the unavailability of the System and Services during such transaction. Such cooperation shall include, but not be limited to, providing parallel goods and services until COUNTY's transition is completed and providing on-site technical support at CONTRACTOR's then current rates. COUNTY may seek specific performance of the preceding two sentences, and CONTRACTOR agrees not to raise the defense that damages are an adequate remedy.

35.3 Except with respect to defaults of any Subcontractor(s), CONTRACTOR shall not be liable for any such excess costs, if its failure to perform this Agreement arises out of fires, floods, epidemics, quarantine restrictions, or other acts of God, but in every such case the failure to perform must be entirely beyond the control and without any fault or negligence of CONTRACTOR. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both CONTRACTOR and Subcontractor, and without any fault or negligence of either of them, CONTRACTOR shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit CONTRACTOR to meet the required performance schedule. CONTRACTOR agrees to use best efforts to obtain such goods or services from other sources. As used in this Subsection 34.3, the terms "Subcontractor" and "Subcontractors" mean Subcontractor(s) at any tier.

35.4 If, after COUNTY has given notice of termination under the provisions of this Section 35.0, it is determined by COUNTY that CONTRACTOR was not in default under the provisions of this Section 34.0, or that the default was excusable under the provisions of this Section 34.0, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 38.0 (TERMINATION FOR CONVENIENCE).

35.5 In addition to, and cumulative to all other remedies in law, at equity and provided under this Agreement, in the event CONTRACTOR is in default of its duties or obligations under this Agreement and it fails to cure the default within the specified cure period after receipt of written notice of default from COUNTY, COUNTY may, without waiving any other rights under this Agreement, elect to withhold from the payments due to CONTRACTOR under this Agreement during the period beginning with the 16th day after CONTRACTOR's receipt of notice of default, and ending on the date that the default has been cured to the reasonable satisfaction of COUNTY, an amount that is in proportion to the magnitude of the default, as determined in COUNTY's reasonable discretion. Upon curing of the default by CONTRACTOR, COUNTY will cause the withheld payments to be paid to CONTRACTOR, without interest, and less any amounts to be set off as provided in this Agreement.

35.6 The rights and remedies of COUNTY provided in this Section 35.0 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

o **36.0 TERMINATION FOR IMPROPER CONSIDERATION**

COUNTY may, by written notice to CONTRACTOR, immediately terminate the right of CONTRACTOR to proceed under this Agreement if it is found that consideration, in any form, was offered or given by CONTRACTOR, either directly or through an intermediary, to any COUNTY officer, employee, or agent with the intent of securing this Agreement, or securing favorable treatment with respect to the award, amendment, or extension of this Agreement, or the making of any determinations with respect to CONTRACTOR's performance pursuant to this Agreement. In the event of such termination, COUNTY shall be entitled to pursue the same remedies against CONTRACTOR as it could pursue in the event of default of CONTRACTOR.

CONTRACTOR shall immediately report any attempt by a COUNTY officer or employee to solicit such improper consideration. The report shall be made either to the COUNTY manager charged with the supervision of the employee or to the COUNTY Auditor-Controller's Employee Fraud Hotline at (213) 974-0914, or (800) 544-6861.

Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

37.0 TERMINATION FOR GRATUITIES

o COUNTY may, by written notice to CONTRACTOR, terminate the right of CONTRACTOR to proceed under this Agreement upon one days notice, if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by CONTRACTOR, or any agent or representative of CONTRACTOR, to any officer, employee or agent of COUNTY with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of such contract. In the event of such termination, COUNTY shall be entitled to pursue the same remedies against CONTRACTOR as it could pursue in the event of default by CONTRACTOR.

38.0 TERMINATION FOR CONVENIENCE

38.1 The COUNTY may terminate this Agreement in whole or in part, from time to time, when such action is deemed by COUNTY, in its sole and absolute discretion, to be in its best interest. Termination of work hereunder shall be effected by delivery to CONTRACTOR of a notice of termination specifying the extent to which performance of work is terminated, and the date upon which such termination becomes effective. The date upon which such termination becomes effective shall be no less than ten (10) days after notice is sent, provided that in the event COUNTY

has purported to terminate this Agreement for default by notice pursuant to Section 35.0 (TERMINATION FOR DEFAULT), and it has later been determined that CONTRACTOR was not in default, no additional notice shall be required upon such determination.

38.2 Upon receipt of a notice of termination, except as otherwise directed by COUNTY, CONTRACTOR shall:

- B. Stop work under this Agreement on the date and to the extent specified in such notice;
- A. Complete performance of such part of the work as shall not have been terminated by such notice.

38.3 In the event of Termination For Convenience, CONTRACTOR shall within ninety (90) days after the effective date of such termination, submit an invoice for all work performed prior to the effective date of termination and all unavoidable costs incurred by CONTRACTOR relating to and/or arising from the termination.

39.0 DISPUTE RESOLUTION PROCEDURE

39.1 CONTRACTOR and COUNTY agree to act promptly and diligently to mutually resolve any disputes which may arise with respect to this Agreement. All such disputes shall be subject to the provisions of this Section 39.0.

39.2 CONTRACTOR and COUNTY agree that, the existence and details of a dispute notwithstanding, both parties shall continue without delay their performance hereunder, except for any performance which COUNTY, in its sole and absolute discretion, determines should be delayed as a result of such dispute. COUNTY shall continue to pay sums not in dispute, during any such period of continued performance. If CONTRACTOR fails to continue without delay its performance hereunder which COUNTY, in its sole discretion, determines should not be delayed as a result of such dispute, then any additional costs which may be incurred by CONTRACTOR or COUNTY as a result of CONTRACTOR's failure to continue to so perform shall be borne by CONTRACTOR, and CONTRACTOR shall make no claim whatsoever against COUNTY for such costs. CONTRACTOR shall promptly reimburse COUNTY for such COUNTY costs, as determined by COUNTY, or COUNTY may deduct all such additional costs from any amounts due to CONTRACTOR from COUNTY, whether under this Agreement or otherwise.

39.3 In the event of any dispute between parties with respect to this Agreement, CONTRACTOR and COUNTY shall submit the matter to their

respective Project Managers for the purpose of endeavoring to resolve

gers are unable to resolve the dispute within a reasonable time, not to exceed five (5) days from the date of submission of the dispute to them, then the matter shall be immediately submitted to the parties' respective Project Directors for further consideration and discussion to attempt to resolve the dispute. If the Project Directors cannot resolve the dispute, or either one of them determines that they are not making reasonable progress toward resolution of the dispute within five (5) business days after the dispute is first submitted to them, then the issue shall proceed pursuant to the Formal Resolution process described in Subsection 39.4 (Formal Resolution).

39.4 Formal Resolution

The dispute resolution process provided in this Section 39.0 is a prerequisite to the exercise of any judicial remedies available to the parties, except in cases where a party is seeking injunctive or other equitable relief.

39.5 Notwithstanding any other provision of this Agreement, COUNTY's right to terminate this Agreement pursuant to Section 34.0 (TERMINATION FOR INSOLVENCY), Section 35.0 (TERMINATION FOR DEFAULT), Section 36.0 (TERMINATION FOR IMPROPER CONSIDERATION), Section 38.0 (TERMINATION FOR CONVENIENCE), or any other termination provision hereunder, and COUNTY's right to seek injunctive relief to enforce the provision of Section 32.0 (DISCLOSURE OF INFORMATION) and Section 33.0 (PROPRIETARY CONSIDERATIONS), shall not be subject to this Dispute Resolution Procedure. The preceding sentence is intended only as a clarification of COUNTY's rights, and shall not be deemed to impair any claims that CONTRACTOR may have against COUNTY or CONTRACTOR's rights to assert such claims after any such termination or such injunctive relief has been obtained.

40.0 FAIR LABOR STANDARDS

CONTRACTOR shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend, and hold harmless COUNTY, its officers, employees, and agents from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by CONTRACTOR's employees.

41.0 NON-DISCRIMINATION AND AFFIRMATIVE ACTION

41.1 CONTRACTOR certifies and agrees that all persons under its employment, its affiliates, subsidiaries, or holding companies are and will be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, or physical or mental handicap in compliance with all applicable Federal and State non-discrimination laws and regulations. This includes compliance with the provisions of Exhibit D (CONTRACTOR's EEO Certification).

41.2 CONTRACTOR shall take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment without regard to race, color, religion, ancestry, national origin, sex, age, or physical or mental handicap in compliance with all applicable Federal and State non-discrimination laws and regulations. Such action shall include, but is not limited to, employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

41.3 CONTRACTOR certifies and agrees that it will deal with its Subcontractors, bidders, or CONTRACTORs without regard to or because of race, color, religion, ancestry, national origin, sex, age, or physical or mental handicap.

41.4 CONTRACTOR certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations, including, but not limited to:

- i. Title VII, Civil Rights Act of 1964;
- ii. Section 504, Rehabilitation Act of 1973;
- iii. Age Discrimination Act of 1975;
- iv. Title IX, Education Amendments of 1973, as applicable; and
- v. Title 43, Part 17, Code of Federal Regulations, Subparts A and B.

and that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, or physical or mental handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement, or under any project, program, or activity supported by this Agreement.

41.5 CONTRACTOR shall allow COUNTY representatives access to inspect CONTRACTOR's employment records during regular business hours to verify compliance with the provisions of this Section 41.0 when so requested by COUNTY.

41.6 COUNTY encourages the participation of Minority Business Enterprises (MBE) and Women's Business Enterprises (WBE) in the

performance of this Agreement. COUNTY strongly urges the participation

on shall be without regard to race, color, or creed. CONTRACTOR shall take affirmative steps to assure that MBE/WBEs are utilized by CONTRACTOR when possible as sources of supplies, hardware, software, services, and other work under this Agreement. The final selection shall be based on the business' ability to provide the best work and value for COUNTY.

41.7 If COUNTY finds that any of the provisions of this Section 41.0 have been violated, such violation shall, at the election of COUNTY, constitute a material breach of this Agreement upon which COUNTY may determine to terminate this Agreement. COUNTY reserves the right to determine independently whether the non-discrimination provisions of this Agreement have been violated. In addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that CONTRACTOR has violated State or Federal non-discrimination laws or regulations shall constitute a finding by COUNTY that CONTRACTOR has violated the non-discrimination provisions of this Agreement.

41.8 The parties agree that in the event CONTRACTOR violates the non-discrimination provisions of this Agreement, COUNTY shall, at its option, be entitled to the sum of five hundred dollars (\$500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating this Agreement.

42.0 EMPLOYMENT ELIGIBILITY VERIFICATION

o CONTRACTOR warrants that it fully complies with all Federal statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Agreement meet the citizenship or alien status requirements set forth in Federal statutes and regulations. CONTRACTOR shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal statutes and regulations as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for the period prescribed by law. CONTRACTOR shall indemnify, defend, and hold harmless COUNTY, its officers and employees from and against any employer sanctions and any other liability which may be assessed against CONTRACTOR or COUNTY in connection with any alleged violation of any Federal statutes or regulations pertaining to the eligibility for employment of any persons performing work hereunder.

CAPTIONS AND SECTION HEADINGS

Captions and Section Headings used in this Agreement are for convenience only and are not part of this Agreement and shall not be used in construing this Agreement.

44.0 LIMITATION OF COUNTY'S OBLIGATION DUE TO NON-APPROPRIATION OF FUNDS

Notwithstanding any other provision of this Agreement, COUNTY shall in no way, be obligated for CONTRACTOR's performance hereunder, or otherwise, unless and until (1) sufficient funds are made available from COUNTY and (2) the COUNTY's Board of Supervisors appropriates funds for this Agreement in COUNTY's budget. In the event of insufficient funds, then this Agreement is subject to partial or full termination by the COUNTY. COUNTY shall notify CONTRACTOR in writing of any such funding limitation at the earliest possible date.

45.0 WAIVER

No waiver by COUNTY or CONTRACTOR of any breach of any provision of this Agreement shall constitute a waiver of any other breach or of such provision. Failure of COUNTY or CONTRACTOR to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The rights and remedies set forth in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. Without limitation of the foregoing, COUNTY may deduct from amounts otherwise payable to CONTRACTOR hereunder COUNTY's uncompensated damages for CONTRACTOR's breach of any provision hereof. The preceding sentence is intended only as a clarification of COUNTY's remedies in the event of breach, and shall not be deemed to impair any claims that CONTRACTOR may have against COUNTY or CONTRACTOR's rights to assert such claims pursuant to Section 39.0 (DISPUTE RESOLUTION PROCEDURE).

46.0 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by, and construed in accordance with, the substantive and procedural laws of the State of California. Without limiting the foregoing, CONTRACTOR and COUNTY intend that this Agreement shall be subject to the provisions of the Uniform Commercial Code as enacted in California, and the parties hereto shall retain all of their rights and remedies

thereunder. CONTRACTOR agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement, and further agrees and consents that venue of any action brought hereunder shall be exclusively in the COUNTY of Los Angeles, California.

47.0 SEVERABILITY

If any provision of this Agreement is adjudged void or invalid for any reason whatsoever, but would be valid if part of the wording thereof were deleted or changed, then such provision shall apply with such modifications as may be necessary to make it valid and effective. In the event that one or more of the provisions of this Agreement is found to be invalid, illegal, or unenforceable in any respect, such provision shall be deemed deleted and the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

48.0 HIRING OF EMPLOYEES

CONTRACTOR and COUNTY agree that, for a period of one (1) year after the expiration of the Term of this Agreement, except with the prior written consent of the other party, neither party shall in any way intentionally induce or persuade any Project Director, Project Manager, or other employee, within the meaning of Subsection 7.3 (Approval of CONTRACTOR's Staff) of one party to become an employee or agent of the other party. Notwithstanding the foregoing, COUNTY shall be entitled to make offers of employment to employees of CONTRACTOR necessary or desirable to perform work described in this Agreement, in the event that (1) COUNTY has the right to terminate this Agreement pursuant to Section 34.0 (Termination for Insolvency); (2) this Agreement is terminated by COUNTY due to CONTRACTOR's default pursuant to Section 35.0 (Termination for Default), or Section 36.0 (Termination for Improper Consideration); (3) CONTRACTOR and COUNTY have followed the dispute resolution procedure set forth in Section 39.0 (Dispute Resolution Procedure), and have otherwise exhausted other administrative remedies, if any, as determined by COUNTY; or (4) CONTRACTOR either announces the withdrawal of support, or otherwise no longer provides services COUNTY deems essential to, support of the System or Services.

49.0 DELEGATION AND ASSIGNMENT

CONTRACTOR shall not delegate its duties and/or assign its rights hereunder, either in whole or in part, without the prior written consent of COUNTY. Any attempted assignment and/or delegation by

CONTRACTOR shall constitute a material breach of this Agreement, upon which the COUNTY, at its sole discretion, may terminate this Agreement.

50.0 NOTICE OF DELAYS

Except as otherwise provided under this Agreement, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party shall, within two (2) days, give notice thereof, including all relevant information with respect thereto, to the other party.

51.0 CONFLICT OF INTEREST

51.1 No COUNTY employee, whose position with COUNTY enables such employee to influence the award of this Agreement, or any competing agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by CONTRACTOR or have any other direct or indirect financial interest in this Agreement. No officer or employee of CONTRACTOR, who may financially benefit from the performance of work hereunder, shall in any way participate in COUNTY's approval, or ongoing evaluation of such work, or in any way attempt to unlawfully influence COUNTY's approval or ongoing evaluation of such work.

51.2 CONTRACTOR shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. CONTRACTOR warrants that it is not now aware of any facts which do or could create a conflict of interest. If CONTRACTOR hereafter becomes aware of any facts which might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to COUNTY. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances.

52.0 MOST FAVORED PUBLIC ENTITY

If CONTRACTOR's prices decline, or should CONTRACTOR, at any time during the term of this Agreement, provide the same goods or services under similar quantity and delivery conditions to the State of California or any county, municipality, or district of the State at prices below those set forth in this Agreement, then such lower prices shall be immediately extended to COUNTY.

53.0 NOTICES

All notices or demands required or permitted to be given or made under this Agreement, unless otherwise specified, shall be in writing and shall be addressed to the parties at the following addresses and delivered (1) by hand with signed receipt; (2) by first-class registered or certified mail, postage prepaid; or (3) by facsimile or electronic mail transmission followed within twenty-four (24) hours by a confirmation copy mailed by first-class registered or certified mail, postage prepaid. Notices shall be deemed given at the time of signed receipt in the case of hand delivery, three (3) days after deposit in the United States mail as set forth above, or on the date of facsimile or electronic mail transmission if followed by timely confirmation mailing. Addresses may be changed by either party giving ten (10) days prior written notice thereof to the other party.

If to COUNTY:

Karen W. Ruis, Data Processing Specialist I
Los Angeles County Sheriff's Department
Data Systems Bureau
1277 North Eastern Avenue
Los Angeles, CA 90063

Joe Cruz, Contracts Manager
Los Angeles County Sheriff's Department
Contracts Administration Unit
4700 Ramona Boulevard
Monterey Park, CA 91754

If to CONTRACTOR:

Yuping Luo, Encore Manager
PRC Public Sector, Incorporated
946 Town and Country Road
Orange, CA 92668

54.0 NO THIRD PARTY BENEFICIARIES

Except as provided herein, CONTRACTOR and COUNTY do not in any way intend that any person or entity shall acquire any rights as a third party beneficiary of this Agreement, except that this provision shall not be construed to diminish CONTRACTOR's indemnification obligations hereunder.

55.0 TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE

CONTRACTOR and each COUNTY lobbyist or COUNTY lobbying firm as defined in Los Angeles County Code Section 2.160.010, retained by CONTRACTOR, shall fully comply with the COUNTY Lobbyist Ordinance, Los Angeles County Code Chapter 2.160. Failure on the part of CONTRACTOR or

any COUNTY lobbyist or COUNTY lobbying firm retained by CONTRACTOR to fully comply with the COUNTY Lobbyist Ordinance shall constitute a material breach of this Agreement upon which COUNTY may immediately terminate or suspend this Agreement.

56.0 CONTRACTOR PERFORMANCE DURING CIVIL UNREST OR DISASTER

CONTRACTOR recognizes that the COUNTY provides services essential to the residents of the communities it serves, and that these services are of particular importance at the time of a riot, insurrection, civil unrest, natural disaster, or similar event. Notwithstanding any other provision of this Agreement, full performance by CONTRACTOR during any riot, insurrection, civil unrest, natural disaster, or similar event is not excused if such performance remains physically possible. During any such event in which the health or safety of any of CONTRACTOR's staff members would be endangered by performing their Services on-site, such staff members may perform any or all of their Services remotely.

57.0 ARM'S LENGTH NEGOTIATIONS

Each party has had the opportunity to receive advice from independent counsel of its own choosing. This Agreement is the result of arm's length negotiations between the parties and shall be construed to have been drafted by all parties such that any ambiguities in this Agreement shall not be construed against either party.

58.0 SURVIVAL

The following provisions of this Agreement shall survive in perpetuity its' expiration and/or termination for any reason(s): Sections 19.0 (PROHIBITION AGAINST ASSIGNMENT AND DELEGATION); 23.0 (INDEMNIFICATION AND INSURANCE REQUIREMENTS); 27.0 (RECORDS AND AUDITS); 29.0 (PATENT, COPYRIGHT, AND TRADE SECRET INDEMNIFICATION); 33.0 (PROPRIETARY CONSIDERATIONS); 40.0 (FAIR LABOR STANDARDS); and Exhibit C (CONTRACTOR Employee Acknowledgment and Confidentiality Agreement).

59.0 TIME IS OF THE ESSENCE

Time is of the essence for CONTRACTOR's performance of this Agreement.

60.0 CONSIDERATION OF GAIN PROGRAM PARTICIPANTS FOR EMPLOYMENT

Should CONTRACTOR require additional or replacement personnel after the Effective Date, CONTRACTOR shall give consideration for any such employment openings to participants in DPSS' Greater Avenues for Independence (GAIN) Program who meet CONTRACTOR's minimum qualifications for the open position. COUNTY will refer GAIN participants by job category to CONTRACTOR.

61.0 CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

61.1 CONTRACTOR acknowledges that COUNTY has established a goal of ensuring that all individuals who benefit financially from COUNTY through Purchase Order or contract are in compliance with their court-ordered child, family, and spousal support obligations in order to mitigate the economic burden otherwise imposed upon COUNTY and its taxpayers. As required by COUNTY's Child Support Compliance Program (County Code Chapter 2.200), and without limiting CONTRACTOR's duty under this Agreement to comply with all applicable provisions of law, CONTRACTOR warrants that it has in place procedures to ensure it complies with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and all lawfully served Wage and Earning Withholding Orders or District Attorney Notices of Wage and Earnings Assignment for Child or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

61.2 Failure of CONTRACTOR to maintain reasonable compliance with the requirements set forth in this Section shall constitute a breach by CONTRACTOR under this Agreement. Without limiting the rights and remedies available to COUNTY under any other provision of this Agreement, failure to cure such breach within ninety (90) days of notice by the Los Angeles County District Attorney, shall be grounds upon which the County Purchasing Agent or Board of Supervisors may terminate this Agreement pursuant to Section 35.0 (TERMINATION FOR DEFAULT).

61.3 CONTRACTOR acknowledges that COUNTY places a high priority on the enforcement of child support laws and the apprehension of child support evaders. CONTRACTOR understands that it is COUNTY's policy to encourage all COUNTY CONTRACTOR's to voluntarily post COUNTY's "L.A.'s Most Wanted Delinquent Parents" poster in a prominent position at CONTRACTOR's place of business. County's District Attorney will supply CONTRACTOR with the poster to be used.

61.4 CONTRACTOR shall complete the Principal Owner Information Form ("POI Form") and submit it as instructed on the document. CONTRACTOR shall also complete the Child Support Compliance Program Certification Form ("CSCP Certification") and submit it as instructed on the document.

62.0 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

Failure of CONTRACTOR to maintain compliance with the requirements set forth in Section 61.0 (CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM) shall constitute a default by CONTRACTOR under this Agreement. Without limiting the rights and remedies available to COUNTY under any other provision of this Agreement, failure to cure such default within ninety (90) days of notice by the Los Angeles County District Attorney shall be grounds upon which COUNTY'S Board of Supervisors may terminate this Agreement pursuant to Section 35.0 (Termination for Default).

63.0 COUNTY'S QUALITY ASSURANCE PLAN

o The COUNTY or its agent will evaluate CONTRACTOR's performance under this Agreement on not less than an annual basis. Such evaluation will include assessing CONTRACTOR's compliance with all contract terms and performance standards. CONTRACTOR deficiencies which COUNTY determines are severe or continuing and that may place performance of this Agreement in jeopardy if not corrected will be reported to the Board of Supervisors. In the event of such deficiencies, the parties shall proceed pursuant to Section 35.0 (TERMINATION FOR DEFAULT). The report will include improvement/corrective action measures taken by the COUNTY and CONTRACTOR. If improvement does not occur consistent with the corrective action measures, COUNTY may terminate this Agreement in whole or in part, or impose other penalties as specified in this Agreement.

64.0 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT

CONTRACTOR shall notify its employees, and shall require each Subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice 1025.

65.0 CONTRACTOR RESPONSIBILITY AND DEBARMENT

65.1 A responsible contractor is a contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the contract. It is the COUNTY's policy to conduct business only with responsible contractors.

65.2 CONTRACTOR is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the COUNTY acquires information concerning the performance of CONTRACTOR on this or other contracts which indicates that CONTRACTOR is not responsible, the COUNTY may, in addition to other remedies provided in the Agreement, debar CONTRACTOR from bidding on COUNTY contracts for a specified period of time not to exceed three (3) years, and terminate any or all existing contracts CONTRACTOR may have with the COUNTY.

65.3 The COUNTY may debar a contractor if the Board of Supervisors finds, in its discretion, that CONTRACTOR has done any of the following:

65.3.1 Violated any term of a contract with the COUNTY;

65.3.2 Committed any act or omission which negatively reflects on CONTRACTOR's quality, fitness, or capacity to perform a contract with the COUNTY or any other public entity, or engaged in a pattern or practice which negatively reflects on the same;

65.3.3 Committed an act or offense which indicates a lack of business integrity or business honesty; or

65.3.4 Made or submitted a false claim against the COUNTY or any other public entity.

65.4 If there is evidence that CONTRACTOR may be subject to debarment, the COUNTY will notify CONTRACTOR in writing of the evidence which is the basis for the proposed debarment and will advise

CONTRACTOR of the scheduled date for a debarment hearing before CONTRACTOR Hearing Board.

65.5 CONTRACTOR Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. CONTRACTOR and/or CONTRACTOR's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, CONTRACTOR Hearing Board shall prepare a proposed decision, which shall contain a recommendation regarding whether CONTRACTOR should be debarred, and if so, the appropriate length of time of the debarment. If CONTRACTOR fails to avail itself of the opportunity to submit evidence to CONTRACTOR Hearing Board, CONTRACTOR may be deemed to have waived all rights of appeal.

65.6 A record of the hearing, the proposed decision, and any other recommendation of CONTRACTOR Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of CONTRACTOR Hearing Board.

65.7 The terms contained in this Section 65.0 shall also apply to Subcontractors of CONTRACTOR.

66.0 ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM

CONTRACTOR and its Subcontractors shall comply with the FTA drug and alcohol testing regulations (40 CFR Parts 653 and 654) and the U.S. Department of Transportation (DOT) Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40) to the full extent that such regulations are, by their terms, applicable to CONTRACTOR and its Subcontractors. The regulations apply to all "contractors" that have "covered employees" that perform "safety sensitive functions" as those terms are defined in the regulations. In the event that any part of the Services, or other tasks under this Agreement fall within the scope of 49 CFR Part 653 and 654, CONTRACTOR, and its Subcontractors (as applicable), shall implement and maintain throughout the Term, a drug and alcohol testing program in compliance with the regulations. In addition to the foregoing, for Services performed on COUNTY property, CONTRACTOR shall provide an alcohol and drug-free workplace program which at a minimum includes the requirements established in the Alcohol and Drug-Free Workplace Manual (Part N).

67.0 CONTRACTOR COMPLIANCE WITH SHERIFF'S DEPARTMENT ANTI-DISCRIMINATION POLICIES AND PROCEDURES/INDEMNIFICATION

67.1 CONTRACTOR and all its employees and agents shall be subject to the COUNTY and Department's policies and procedures regarding anti-discrimination, anti-harassment, equality and similar or related policies, including, but not limited to policy number 3-01/030.72 regarding Sexual Harassment and Retaliation. CONTRACTOR shall comply with all applicable Federal, State and local laws, rules, regulations or ordinances. CONTRACTOR agrees that a violation of said policies or procedures shall constitute a material breach of contract upon which the COUNTY may determine to cancel, terminate, suspend the contract or take other appropriate action in its discretion.

67.2 CONTRACTOR agrees to indemnify, defend, and hold harmless COUNTY, and its Special Districts, elected and appointed officers, employees and agents from and against any and all liability, including but not limited to demands, claims, all formal, informal, internal, external, administrative or judicial actions and proceedings, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with CONTRACTOR and its employees' acts or omissions alleged to be in violation of anti-discrimination, anti-harassment, equality and similar or related policies, procedures or laws.

68.0 LOSS PREVENTION

In performing its obligations hereunder, CONTRACTOR shall at a minimum provide for protecting the lives and health of employees and other persons; preventing damage to property, goods; and avoiding work interruptions. For these purposes, CONTRACTOR shall, at no additional cost:

- A. Comply with the safety policies of the Sheriff and all applicable laws, standards, codes, rules, and regulations;
- B. Take additional measures the Sheriff determines are reasonably necessary for this purpose. This determination, when delivered to CONTRACTOR or CONTRACTOR's agents, shall be deemed to be sufficient notice of the non-compliance from COUNTY, and CONTRACTOR shall immediately begin corrective actions. If CONTRACTOR fails or refuses to take corrective action promptly, the Sheriff may issue and order stopping all or part of the Services or other work until satisfactory corrective action has been taken. CONTRACTOR shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances;

- C. Maintain an accurate record of exposure data on all occurrence incident to Services resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or Equipment. CONTRACTOR shall report this data in the manner prescribed by the Sheriff; and
- D. Be solely responsible for its Subcontractor's compliance with this article.

69.0 PROTECTION OF STRUCTURES, EQUIPMENT, AND VEGETATION

CONTRACTOR shall immediately replace or repair, at no expense to COUNTY, all damages caused by CONTRACTOR or its agents to existing structures, equipment, and vegetation on COUNTY property. If CONTRACTOR fails or refuses to timely and satisfactorily make such repair or replacement, CONTRACTOR shall be liable for the costs incurred by COUNTY to effect the repairs or replacement. These costs may be withheld by COUNTY and deducted from amounts otherwise due to CONTRACTOR hereunder.

70.0 AUTHORIZATION WARRANTY

CONTRACTOR represents and warrants that the person signing the Agreement for CONTRACTOR is fully authorized to obligate CONTRACTOR to each and every term, condition, and obligation hereunder and that all corporate acts necessary to the execution of this Agreement have been accomplished.

71.0 COMPLIANCE WITH JURY SERVICE PROGRAM

71.1 This Agreement is subject to the provisions of the COUNTY's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code.

71.2 Unless CONTRACTOR has demonstrated to the COUNTY's satisfaction either that CONTRACTOR is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that CONTRACTOR qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), CONTRACTOR shall have and adhere to a written policy that provides that its Employees shall receive from the CONTRACTOR, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that employees deposit any fees received for such jury service with the CONTRACTOR or that the CONTRACTOR deduct from the Employee's regular pay the fees received for jury service.

71.3 For purposes of this Section, "Contractor" means a person, partnership, corporation or other entity which has a contract with the COUNTY or a subcontract with a COUNTY contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more COUNTY contracts or subcontracts. "Employee" means any California resident who is a full time employee of CONTRACTOR. "Full time" means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the COUNTY, or 2) CONTRACTOR has a long-standing practice that defines the lesser number of hours as full time. Full time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If CONTRACTOR uses any subcontractor to perform services for the COUNTY under the contract, the subcontractor shall also be subject to the provisions of this Section 71.0. The provisions of this Section 71.0 shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the agreement.

71.4 If CONTRACTOR is not required to comply with the Jury Service Program when the Agreement commences, CONTRACTOR shall have a

continuing obligation to review the applicability of its “exception status”

It immediately notify COUNTY if CONTRACTOR at any time either comes within the Jury Service Program's definition of "Contractor" or if CONTRACTOR no longer qualifies for an exception to the program. In neither event, CONTRACTOR shall immediately implement a written policy consistent with the Jury Service Program. The COUNTY may also require, at any time during this Agreement and at its sole discretion, that CONTRACTOR demonstrate to the COUNTY's satisfaction that CONTRACTOR either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that CONTRACTOR continues to qualify for an exception to the program.

71.5 CONTRACTOR's violation of this Section 71.0 of this Agreement may constitute a material breach of this Agreement. In the event of such material breach, COUNTY may, in its sole discretion, terminate this Agreement and/or bar CONTRACTOR from the future award of future COUNTY contracts for a period of time consistent with the seriousness of the breach.

72.0 FORCE MAJEURE

In the event CONTRACTOR is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, CONTRACTOR shall not be liable to COUNTY for such failure to comply.

73.0 BUDGET REDUCTIONS

In the event that the County's Board of Supervisors adopts, in any fiscal year, a COUNTY budget which provides for reductions in the salaries and benefits paid to the majority of COUNTY employees and imposes similar reductions with respect to COUNTY contracts, the COUNTY reserves the right to reduce its payment obligation correspondingly for that fiscal year and any subsequent fiscal year services provided by the CONTRACTOR under this Agreement. The COUNTY's notice to the CONTRACTOR regarding said reduction in payment obligation shall be provided within thirty (30) calendar days of the Board's approval of such actions. CONTRACTOR shall promptly enter into discussions to reach mutual agreement upon payment reductions described in the first sentence of this Section 73.0. In the event the parties reach mutual agreement upon such payment reductions, such payment reductions will be effective during each COUNTY fiscal year agreed to. In the event the parties cannot reach agreement on the payment reduction, the proposed payment reductions will not take effect; however, COUNTY may terminate this Agreement pursuant to Section 38.0 (TERMINATION FOR CONVENIENCE). CONTRACTOR shall continue to provide all Services set forth in this Agreement prior to termination or expiration of this Agreement.

74.0 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/OR RE-EMPLOYMENT LIST

Should the CONTRACTOR require additional or replacement personnel after the effective date of this Agreement to perform the Services set forth herein, the CONTRACTOR shall give **first consideration** for such employment openings to qualified, permanent COUNTY employees who are targeted for layoff or qualified, former COUNTY employees who are on a re-employment list during the lift of this Agreement.

75.0 RECYCLED BOND PAPER

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the CONTRACTOR agrees to use recycled-content paper to the maximum extent possible on this Agreement.

IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles has caused this Agreement to be subscribed by its Chairman and the seal of said Board to be hereto affixed and attested to by the Executive Officer thereof, and CONTRACTOR has caused this Agreement to be executed on its behalf by its duly authorized officer, this _____ Day of _____, 2003.

ANGELES

THE COUNTY OF LOS

Board

By: Chairman of the

ATTEST:

VIOLET VARONA-LUKENS

PRC Public Sector, Incorporated

Executive Officer-Clerk of
the Board of Supervisors

By:

Title:

BY: Deputy

APPROVED AS TO FORM:

LLOYD W. PELLMAN
County Counsel

By: GARY GROSS
Senior Deputy County Counsel

